

# **The Lake Lothing (Lowestoft) Third Crossing Order 201[\*]**

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Lake Lothing  
**THIRD  
CROSSING**

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## **Document SCC/LLTC/EX/172: Applicant's revised draft Development Consent Order (dDCO) R5 - Clean**

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**Planning Act 2008**

**The Infrastructure Planning (Applications: Prescribed Forms and Procedure)  
Regulations 2009**

**The Infrastructure Planning (Examination Procedure) Rule 2010**

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**201[\* ] No.**

**INFRASTRUCTURE PLANNING**

**The Lake Lothing (Lowestoft) Third Crossing Order 201[\*]**

*Made* - - - - 201\*

*Coming into force* - - 201\*

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An application has been made to the Secretary of State, under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

The application was examined by a Panel of 2 members (“the Panel”) pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The Panel, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 74(2)(d) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State has considered the report and recommendation of the Panel and the representations made and not withdrawn.

The Secretary of State, having decided the application, has decided to make an Order granting development consent for the development described in the application [with modifications which in

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(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/752, S.I. 208/378

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c.20).

the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State, in exercise of the powers conferred by sections 114(a), 115(b), 120(c), 122, and 123 and 149A of, and paragraphs 1 to 4, 10 to 17, 19, 20 to 22, 23, 26, 32, 32A, 32B, 33, 34, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order —

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the Lake Lothing (Lowestoft) Third Crossing Order 201[\*] and comes into force on [ ] 201[\*].

#### Interpretation

2.—(1) In this Order, unless otherwise stated—

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

“the 1980 Act” means the Highways Act 1980(f);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(g);

- 
- (a) As amended by paragraph 55 of Part 1 of Schedule 11 to the Localism Act 2011.
- (b) As also amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
- (c) As also amended by section 140 and paragraph 60 of Part 1 of Schedule 12 to the Localism Act 2011.
- (d) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1980 Act which are not relevant to this Order.
- (e) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 14 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 14 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 14 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (f) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47 (a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (g) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are amendments to the 1981 Act which are not relevant to this Order.

“the 1984 Act” means the Road Traffic Regulation Act 1984(a);

“the 1990 Act” means the Town and Country Planning Act 1990(b);

“the 1991 Act” means the New Roads and Street Works Act 1991(c);

“the 2004 Act” means the Traffic Management Act 2004(d);

“the 2008 Act” means the Planning Act 2008(e);

“the 2009 Act” means the Marine and Coastal Access Act 2009(f);

“AB Ports” means Associated British Ports, company reference number ZC000195, whose registered office address is 25 Bedford Street, London WC2E 9ES;

“address” includes any number or address for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“appointed person” means—

(a) a person acting in the course of that person’s duties who—

(i) is an employee, agent, contractor or sub-contractor of the undertaker; or

(ii) is authorised by the undertaker to exercise one or more of its functions under this Order; or

(b) a constable, Police Community Support Officer, an officer of the Driver and Vehicle Standards Agency, an officer of the Health and Safety Executive, person authorised for the purposes of section 44 (powers of fire-fighters etc in an emergency etc) of the Fire and Rescue Services Act 2004(g) or a person accredited by or under section 41 (accreditation under community safety accreditation schemes) of the Police Reform Act 2002(h), acting in the execution of that person’s duties within the new bridge area;

“the authorised development” means the development described in Schedule 1 (authorised development) and any other development within the meaning of section 32 of the Planning Act 2008 that is authorised by this Order;

“the book of reference” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“business day” means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act(i);

“Cadent” means Cadent Gas Limited or any successor in title or assign including a successor to their licence as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“capital dredge” means a dredge which comprises the excavation of the seabed, in an area or down to a level (relative to Ordnance Datum) not previously dredged during the preceding 10 years;

“carriageway” has the same meaning as in the 1980 Act

“the classification of roads plan” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the classification of roads plan for the purposes of this Order;

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(a) 1984 c.27.

(b) 1990 c.8. Section 206(1) was amended by section 192(8) to, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 c.29 (date in force to be appointed see section 241(3), (4)(a),(c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(c) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(d) 2004 c.18.

(e) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).

(f) 2009 c.23.

(g) 2004 c.21. Section 44 was amended by the Emergency Workers (Obstruction) Act 2006 (c.39).

(h) 2002 c.30. Section 41 was amended by the Police and Justice Act 2006 (c.48).

(i) 1971 c.80.



“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions; receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“construct” includes carrying out, placing, altering, replacing, relaying and removal and “construction” is to be construed accordingly;

“cycleway” means a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way: a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988(a)) with a right of way on foot and a right of way on horseback or leading a horse;

“electronic transmission” means a communication transmitted—

(c) by means of an electronic communications network; or

(d) by other means but in an electronic form;

“the engineering section drawings and plans” means the documents of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the engineering section drawings and plans for the purposes of this Order;

“the environmental statement” means the documents of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the environmental statement for the purposes of this Order;

“flood risk activity” has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016(b);

“footpath” and “footway” have the same meaning as in the 1980 Act;

“the general arrangement plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the general arrangement plans for the purposes of this Order;

“the harbour authority” means AB Ports in its role as the owner and operator of, and the statutory harbour authority for, Lowestoft Harbour as established by section 8 of, and paragraph 2 of Schedule 3 to the Transport Act 1981(c);

“the harbour limits plan” means the plan of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the harbour limits plan for the purposes of this Order;

“the harbour master” means the harbour master appointed by the harbour authority and includes that person’s authorised deputies and assistants;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the interim design guidance manual” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the design guidance manual for the purposes of this Order and which sets out the principles for the detailed design of the authorised development;

“Lake Lothing” means the navigable saltwater lake within the town of Lowestoft in the area of East Suffolk Council between the North Sea and Oulton Broad, as identified by reference points 652111E, 292801N, 655207E, 292615N;

“the land plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the land plans for the purposes of this Order;

“the level of high water” means the level of mean high water springs;

“the limits of deviation” means the limits of deviation referred to in article 5;

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(a) 1988 c.52.  
(b) S.I. 2016/1154.  
(c) 1981 c.56.

“the limits of dredging” means the lines marked “limits of dredging” on the limits of dredging plan;

“the limits of dredging plan” means the plan of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the limits of dredging plan for the purposes of this Order;

“local highway authority” means Suffolk County Council in its role as highway authority for the county of Suffolk pursuant to the Highways Act 1980;

“local planning authority” means East Suffolk Council, or any successor to it as planning authority;

“Lowestoft Harbour” means the harbour over which the harbour authority has jurisdiction as is delineated on the harbour limits plan together with any quays, docks or other land held in connection with that harbour;

“maintain” includes inspect, repair, adjust, alter, remove, replace, or reconstruct the authorised development and any derivative of “maintain” is to be construed accordingly;

“maintenance dredge” means any activity which comprises the removal of recently-accumulated sediments such as mud, sand and gravel in order to keep channels, berths and other areas at their designed depths and which takes place in circumstances where—

(e) the level of the seabed to be restored by the dredging is not lower than it has been at any time during the past 10 years; and

(f) there is evidence that dredging has previously been undertaken to that level (or lower) during that period;

“mooring” means any buoy, pile, post, chain, pillar, pontoon, fixed rail or like apparatus or convenience provided or used for the mooring of vessels;

“the Navigation Working Group” means the group consulted by the undertaker in relation to its preparation of the preliminary navigation risk assessment and maintained by the undertaker following this Order coming into force for the purposes of article 40 and Schedule 2, as its membership may from time to time be varied by the undertaker in consultation with the members of the group;

“the new bridge” means Work Nos. 1B, 1C, 1D and 1E (including without limitation the piers, bridge deck, carriageway and parapets);

“the new bridge area” means the new bridge, the new bridge approaches, the new bridge control building area and the new bridge infrastructure, as shown on the new bridge area plans;

“the new bridge approaches” means the northern and southern approaches to the new bridge (respectively “the new bridge northern approach” and “the new bridge southern approach”), the centrelines of which are shown on the new bridge area plans;

“the new bridge area plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the new bridge area plans for the purposes of this Order;

“the new bridge control building area” means the area outlined in green on Sheet 2 of the new bridge area plans;

“the new bridge infrastructure” means the infrastructure elements supporting the new bridge including (without limitation) the cables, drainage, electricity and water supplies, and fenders relating to the new bridge, as well as any plant and machinery and any emergency, safety or communications equipment required for the construction, maintenance or operation of the new bridge;

“the Order land” means the land shown coloured pink and the land shown coloured blue on the land plans and which is described in the book of reference;

“the Order limits” means the limits of land to be acquired permanently or used temporarily as shown on the land plans, and the limits of land within which the authorised development, as shown on the works plans, may be carried out;

“owner” in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“the preliminary navigation risk assessment” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the preliminary navigation risk assessment for the purposes of this Order and which sets out the measures to be undertaken to ensure that risks to navigation from the construction and operation of the new bridge are as low as reasonably practicable;

“the rights of way and access plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the rights of way and access plans for the purposes of this Order;

“the Scheme of Operation” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the scheme of operation for the purposes of this Order, or any variation or replacement of that scheme approved by the harbour authority under article 40(2) or by the Secretary of State under article 40(5), as the case may be;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“statutory utility” means a statutory undertaker or a public communications provider as defined in section 151(1) (interpretation) of the Communications Act 2003(b);

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tidal works” means so much of any work authorised by this Order as is in, under or over tidal waters or tidal lands below the level of high water;

“traffic authority” has the same meaning as in section 121A(c) (traffic authorities) of the 1984 Act;

“the traffic regulation measures plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the traffic regulation measures plans for the purposes of this Order;

“the tree preservation order trees location plan” means the plan of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the tree preservation order trees location plan for the purposes of this Order;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“the undertaker” means Suffolk County Council of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX;

“vessel” means every description of vessel with or without means of propulsion of any kind and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on or by water, a seaplane on or in the water and a hovercraft within the meaning of the Hovercraft Act 1968(d);

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the works plans for the purposes of this Order.

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(a) 1981 c.67.

(b) 2003 c.21.

(c) As inserted by section 168(1) of, and paragraph 70 of Part 2 to Schedule 8 to, the New Roads and Street Works Act 1991 (c.22).

(d) 1968 c.59.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the enjoyment of interests or rights and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the plan to which the reference applies.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

### **Disapplication of legislation, etc.**

**3.—**(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction of the authorised development and, within any maintenance period defined in article 33(12), any maintenance of any part of the authorised development—

- (a) byelaw 25 of the Lowestoft Harbour Byelaws 1993(a);
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5,6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991(b);
- (c) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(c);
- (d) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 in respect of a flood risk activity only; and
- (e) the provisions of the Neighbourhood Planning Act 2017(d) insofar as they relate to temporary possession of land under articles 32 and 33 of this Order.

(2) Despite the provisions of section 208 of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010 any building comprised in the authorised development is deemed to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

(3) As from the date on which the authorised development is commenced any conditions of a planning permission granted under section 57 of the 1990 Act which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Schedule 2.

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(a) Byelaws for the Port of Lowestoft made by the harbour authority under section 83 of the Harbours, Docks and Piers Clauses Act 1847 (1847 c.27) (incorporated by section 51 of the British Transport Docks Act 1964 (1964 c.38)) and by section 52 of the British Transport Docks Act 1964.

(b) 1991 c.57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(c) 1991 c.59

(d) 2017 c.20.

## PART 2

### WORKS PROVISIONS

#### *Principal powers*

#### **Development consent, etc., granted by the Order**

4.—(1) Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within, adjoining, or sharing a common boundary with the Order limits has effect subject to the provisions of this Order.

#### **Limits of Deviation**

5.—(1) Subject to the following provisions of this article, the undertaker must construct the authorised development within the Order limits.

(2) In constructing and maintaining the non-linear works comprised in the authorised development, the undertaker may deviate laterally within the limits of deviation for those works shown on the works plans to the extent the undertaker considers to be necessary or convenient.

(3) In constructing or maintaining the linear works comprised in the authorised development—

- (a) in the case of linear works for which limits of deviation are shown on the works plans, the undertaker may deviate laterally from the lines or situations shown on those plans to the extent of the limits of deviation, so far as the undertaker considers to be necessary or convenient; and
- (b) in the case of linear works for which limits of deviation are not shown on the works plans, the undertaker may deviate laterally from the lines or situations shown on those plans to the extent of the Order limits, so far as the undertaker considers to be necessary or convenient.

(4) In constructing and maintaining the part of the new bridge comprising Work No.1D, the undertaker—

- (a) must not, unless otherwise agreed with the harbour authority, construct any tidal works within the part of Lake Lothing which is located between the two areas identified in paragraph (5); and
- (b) must safeguard the width of the navigable channel within Lake Lothing by preserving a distance of no less than 32 metres between the outer edge of the fenders referred to in each of paragraphs (5)(a) and (5)(b).

(5) The two areas referred to in paragraph (4) are—

- (a) in relation to the pier located to the south of the north quay of Lowestoft Harbour, the area between the north quay wall and the outer edge of the fenders surrounding that pier; and
- (b) in relation to the pier located to the north of the south quay of Lowestoft Harbour, the area between the south quay wall and the outer edge of the fenders surrounding that pier.

(6) In constructing and maintaining the authorised development, the undertaker may deviate vertically from the levels shown on the engineering section drawings and plans—

- (a) to any extent upwards as the undertaker considers to be necessary or convenient but not exceeding 0.5 metres or, in relation to the parts of the authorised development referred to in column (1) of the table below, not exceeding the limit for each such part set out in the corresponding entry in column (2) of that table; and
- (b) subject to paragraph (7), to any extent downwards as the undertaker considers to be necessary or convenient, except in relation to the parts of the authorised development referred to in column (1) of the table below, where the extent of permitted downwards deviation for each such part is set out in the corresponding entry in column (3) of that table.

<i>(1)</i> <i>Numbered Work</i>	<i>(2)</i> <i>Upwards vertical limit of deviation</i>	<i>(3)</i> <i>Downwards vertical limit of deviation</i>
Work No. 1A	1 metre	1.5 metres
Work No. 1B	1 metre	2.3 metres
Work No. 1C	1 metre	4 metres
Work No. 1D	1 metre	2.5 metres
Work No. 1E	1 metre	1.1 metres
Work No. 5	1.5 metres	-
Work No. 6	5 metres	2.5 metres

(7) Paragraph (6)(b)—

- (a) does not prevent the undertaker, in constructing the piles comprising part of each of Work Nos. 1B, 1C, 1D and 1E, from deviating to any extent downwards as the undertaker considers to be necessary or convenient;
- (b) does not permit the undertaker in constructing the bridge deck between piers within Lake Lothing, comprising part of Work No. 1D, to deviate downwards to a level which is less than 12 metres above Highest Astronomical Tide;
- (c) does not prevent the undertaker, in constructing the lifting elements of the superstructure of the new bridge, comprising part of Work No. 1D, from deviating by up to 2.5 metres above the levels shown on the engineering section drawings and plans (mainline long section sheet 2 of 2), and to any extent downwards as the undertaker considers to be necessary or convenient.

(8) The undertaker must not undertake any capital dredge to a depth lower than—

- (a) 1.6m below bed level in respect of works in Lake Lothing except Work No.7; and
- (b) 2.2m below chart datum in respect of Work No.7,

unless the undertaker has demonstrated to the MMO and the MMO has agreed in writing that dredging to a depth lower than those set out in sub-paragraphs (a) and (b) would not give rise to any materially new or materially different environmental effects than those assessed in the environmental statement.

(9) Without limitation on the scope of paragraphs (2) to (7) in constructing or maintaining the authorised development the undertaker may—

- (a) deviate by up to 3 metres from the points of commencement and termination of any of the linear works, except in the case of the coterminous point of termination and commencement of Work Nos 1A and 1B, from which the undertaker may deviate by up to 10 metres in a north-easterly direction following the centreline of Work No. 1A, and by up to 3 metres in a south-westerly direction following the centreline of Work No. 1B; and
- (b) deviate from the design of the new bridge or bridge structure shown on the engineering section drawings and plans, provided that any such deviation is in accordance with the final version of the design guidance manual approved under Requirement 3(2).

(10) In this article, references to—

- (a) “linear works” are references to any works shown on the works plans by way of centre lines; and
- (b) “non-linear works” are references to any other works shown on the works plans.

### **Street works**

6.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any street and—

- (a) break up or open the street, or any sewer, drain or tunnel beneath it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) carry out any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The undertaker must not carry out works to any street under paragraph (1) for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.

### **Application of the 1991 Act**

7.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64(a) (dual carriageways and roundabouts) of the 1980 Act or section 184(b) (vehicle crossings) of that Act.

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works carried out under the powers of this Order—

- section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial street works);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing etc. of re-surfacing);
- section 73C (materials; workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations

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(a) As amended by Schedule 17 to the Local Government Act 1985 (c. 51) and Schedule 9 to the 1991 Act.

(b) As amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 9 of Part 1 of Schedule 8, and Schedule 9, to the 1991 Act.

made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 11 (temporary stopping up and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

- (5) The provisions of the 1991 Act(a) referred to in paragraph (4) are—
- section 54(b) (advance notice of certain works), subject to paragraph (6)
  - section 55(c) (notice of starting date of works), subject to paragraph (6)
  - section 57(d) (notice of emergency works);
  - section 59(e) (general duty of street authority to co-ordinate works);
  - section 60 (general duty of undertakers to co-operate);
  - section 68 (facilities to be afforded to street authority);
  - section 69 (works likely to affect other apparatus in the street);
  - section 75 (inspection fees);
  - section 76 (liability for cost of temporary traffic regulation); and
  - section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Section 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references as in section 57 of that Act to emergency works were a reference to a stopping up, alteration, or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 8 (construction and maintenance of new, altered, or diverted streets)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and the undertaker is not by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

### **Construction and maintenance of new, altered or diverted streets and other structures**

**8.—**(1) Any highway to be constructed altered or diverted under this Order including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed in writing, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) The structure and highway surface of the new bridge must be maintained by and at the expense of the local highway authority from the date of the completion of the new bridge.

(4) Where land not previously part of the public highway comes to form part of the public highway by virtue of the construction, diversion or alteration of the streets set out in Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and private means of access), unless otherwise agreed with the street authority the land is deemed to have been

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(a) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(b) As also amended by section 49(1) of the Traffic Management Act 2004.

(c) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(d) As also amended by section 52(3) of the Traffic Management Act 2004.

(e) As amended by section 42 of the Traffic Management Act 2004.



dedicated as public highway on the expiry of a period of 12 months from completion of the street that has been constructed, altered or diverted.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by the undertaker to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed.

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(7) The date of completion of any works to a highway pursuant to this article 8 is to be agreed by the undertaker and the local highway authority.

(8) The date of completion of any works to a street which is not and is not intended to be a highway pursuant to this article 8 is to be agreed by the undertaker and the street authority, acting reasonably.

### **Classification of roads, etc.**

9. On the date on which the roads described in Schedule 3 (classification of roads etc) are completed and open for traffic—

- (a) the roads described in paragraphs 1 to 15 of Part 1 of Schedule 3 are to be classified as the A12 from such date as the undertaker may determine, as if such classification had been made under section 12(3) (general provisions as to principal and classified roads) of the 1980 Act
- (b) the roads described in paragraphs 16 to 23 of Part 1 of Schedule 3 are to be classified as the A146 from such date as the undertaker may determine, as if such classification had been made under section 12(3) (general provisions as to principal and classified roads) of the 1980 Act; and
- (c) the roads described in Part 2 of Schedule 3 are to be classified as set out in that Part and are, where specified in that Part, to be classified roads for the purpose of any enactment or instrument which refers to highways classed as classified roads, as if such classification has been made under section 12(3) of the 1980 Act.

### **Permanent stopping up of streets and private means of access**

10.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in columns (1) and (2) of Parts 1, 3 and 4 of Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) to the extent specified and described in column (3) of those Parts of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Parts 1 and 3 of Schedule 4 (being a street to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street or private means of access to be constructed and substituted for it, which is specified in column (3) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) No private means of access specified in columns (1) and (2) of Part 4 of Schedule 4 (being a private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all of the land which abuts on either side of the private means of access to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land;
- (b) there is no right of access to the land from the private means of access concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the private means of access concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site or private means of access as is bounded on both sides by land owned by the undertaker.

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) This article is subject to article 35 (apparatus and rights of statutory undertakers in stopped up streets).

### **Temporary stopping up and restriction of use of streets**

**11.—**(1) The undertaker may, during and for the purposes of carrying out the authorised development, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article and lying within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Access to works**

12. The undertaker may, for the purposes of the authorised development and with the consent of the street authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Agreements with street authorities**

- 13.—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised development;
  - (b) the strengthening or improvement of any street under the powers conferred by this Order;
  - (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;
  - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order;
  - (e) the carrying out in the street of any of the authorised development; or
  - (f) any such works as the parties may agree.
- (2) Such agreement may, without limitation on the scope of paragraph (1)—
- (a) provide for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and the street authority specifying a reasonable time for completion of the works;
  - (c) provide for the dedication of any new street as public highway further to section 38(a) of the 1980 Act; and
  - (d) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Use of private roads for construction**

14.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### *Supplemental powers*

### **Discharge of water**

15.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any

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(a) As amended by Schedule 17 to the Local Government Act 1985 (c. 51), section 22(1) of the 1991 Act and paragraphs 1 and 19 of Part 1 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld or delayed; and
- (b) where that person has been given opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, a local authority, or a sewerage undertaker;
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991, have the same meaning as in that Act.

(8) If a person who has received an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving the application, that person is deemed to have granted consent or given approval, as the case may be.

### **Protective works to buildings**

**16.—**(1) Subject to the following provisions of this article, the undertaker may at the undertaker’s own expense carry out such protective works to any building lying within the Order limits or which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) Subject to paragraph (5) for the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey—

- (a) any building falling within paragraph (1) and any land within its curtilage; and
- (b) where necessary or expedient, land which is adjacent to the building falling within paragraph (1) but outside its curtilage (whether or not such adjacent land is inside or outside the Order limits),

and place on, leave on and remove from the land monitoring apparatus.

(4) For the purpose of carrying out protective works to a building under this article the undertaker may (subject to paragraphs (5) and (6))—

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(a) 1991 c.56. Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

- (a) enter the building (and any land within its curtilage); and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (whether or not such adjacent land is inside or outside the Order limits) but not any building erected on it,

and if it is reasonably required, the undertaker may take possession, or exclusive possession, of the building and land or any part thereof for the purpose of carrying out the protective works.

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building (and land within its curtilage) or land;
- (c) a right under paragraph (4)(a) to enter and take possession of a building (and land within its curtilage); or
- (d) a right under paragraph (4)(b) to enter and take possession of land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c) specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d) the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 60 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without affecting article 39 (no double recovery), nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a) of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Section 13(b) (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125(c) (application of compulsory acquisition provisions) of the 2008 Act.

(11) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(12) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development; and

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(a) As amended by S.I. 2009/1307

(b) As amended by sections 62(3) and 139(4)-(9) of, paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 223 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(c) As amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk to such operation being disrupted.

#### **Authority to survey and investigate land**

17.—(1) The undertaker may for the purposes of this Order enter on—

- (a) any land shown within the Order limits; and
- (b) where reasonably necessary, any land which is adjacent to but outside the Order limits, and—
  - (i) survey or investigate the land;
  - (ii) without limitation to the scope of sub-paragraph (i), make any excavations or trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
  - (iii) without limitation to the scope of sub-paragraph (i), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
  - (iv) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

#### **Felling or lopping of trees**

18.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2) or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Trees subject to tree preservation orders**

**19.—**(1) The undertaker may fell or lop any tree described in Schedule 5 and shown on the tree preservation order trees location plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to passengers or other persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) must not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Temporary suspension of navigation within Lake Lothing in connection with the authorised development**

**20.—**(1) Regardless of any other enactment or in any rule of law, the undertaker may, with the consent of the harbour authority (such consent not to be unreasonably withheld)—

- (a) temporarily close; or
- (b) temporarily restrict the passage of vessels in any way in,

any part of Lake Lothing within the Order limits that the undertaker deems necessary or expedient for the purposes of constructing, inspecting or maintaining the new bridge.

(2) In exercise of the powers conferred by paragraph (1)—

- (a) the undertaker must execute such works or do such things as may be required to ensure that at any time no more of that part of Lake Lothing which is within the Order limits is closed than is reasonably necessary in all the circumstances; and
- (b) should it be necessary at any time to close that part of Lake Lothing which is within the Order limits to navigation, the undertaker must use its best endeavours to ensure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use Lake Lothing.

(3) Following receipt of the harbour authority's consent under paragraph (1) to any proposed closure or restriction but subject to paragraph (5), no later than three months before the date when a closure or restriction is due to commence the undertaker must—

- (a) inform the Navigation Working Group and the operators of all marinas located on Lake Lothing of the nature of the proposals including when they are intended to take effect and their anticipated duration; and

- (b) take such steps as it considers appropriate in the circumstances, in consultation with the harbour authority, to publicise the nature of the proposals including when they are intended to take effect and their anticipated duration.

(4) Paragraph (3) does not apply in the case of an emergency, or in any case where a proposed closure or restriction is intended to last for 48 hours or less, when the undertaker must in consultation with the harbour authority take such steps as it considers practicable in the circumstances to inform persons of, and to publicise, the nature and anticipated duration of the proposed closure or restriction.

(5) As soon as reasonably practicable after the undertaker has complied with paragraph (3), the harbour authority must issue a notice to mariners giving the commencement date and other particulars of the temporary closure or restriction concerned.

(6) Except in an emergency, a master of a vessel must not allow a vessel to enter into any part of Lake Lothing within the Order limits that has been temporarily closed or subject to temporary restrictions under this article without first obtaining the consent of the undertaker which may attach reasonable conditions to any consent.

(7) Before granting consent under paragraph (6), the undertaker must consult with the harbour master.

### **Removal of vessels**

**21.—**(1) If it appears to the undertaker necessary or convenient to do so for the purposes of the construction or maintenance of the authorised development it may, with the consent of the harbour authority (such consent not to be unreasonably withheld), remove from within the Order limits, any vessel that is—

- (a) sunk, stranded or abandoned; or
- (b) moored or laid up (whether lawfully or not),

and relocate it to such place outside the Order limits (and if that is elsewhere within Lowestoft Harbour, to such place as is agreed by the harbour master) where it may without injury to the vessel be moored or laid.

(2) Before exercising the powers conferred by paragraph (1) the undertaker must take such steps as it considers appropriate in the circumstances, in consultation with the harbour authority, to publish and display notices setting out—

- (a) the reason for requiring removal of any vessel from within that part of the limits of dredging specified in the notice; and
- (b) the date by which the vessel specified in the notice must be removed from that part of Lake Lothing within the Order limits also specified in the notice.

(3) If the owner or master of any vessel within the Order limits does not remove that vessel from within the part of the Order limits specified in the notice before the date specified in accordance with paragraph (2)(b) the undertaker may, having first obtained consent from the harbour authority, cause that vessel to be removed.

(4) Paragraph (2) does not apply in the case of an emergency, when the undertaker must in consultation with the harbour master take such steps as it considers practicable in the circumstances to inform persons of the proposed removal of any vessel from any part of Lake Lothing within the Order limits.

(5) The undertaker may recover as a debt from the owner of any vessel removed pursuant to paragraph (3) all expenses incurred by the undertaker in respect of its removal.



**PART 3**  
**POWERS OF ACQUISITION AND POSSESSION OF LAND**

*Powers of acquisition*

**Compulsory acquisition of land**

**22.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or as is incidental to it.

(2) This article is subject to article 25 (compulsory acquisition of rights) and article 26 (acquisition of subsoil, etc., only) and article 32 (temporary use of land for carrying out the authorised development).

**Compulsory acquisition of land – incorporation of the mineral code**

**23.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for the “acquiring authority” there is substituted “the undertaker”.

**Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily**

**24.**—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act<sup>(a)</sup> as applied by article 30 (application of the 1981 Act)

in relation to any part of the Order land.

(2) The authority conferred by article 32 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

**Compulsory acquisition of rights, etc.**

**25.**—(1) Subject to paragraphs (2) and (4) the undertaker may acquire such rights over the Order land or impose such restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) The powers of paragraph (1) may be exercised by a statutory undertaker instead of by the undertaker in any case where the undertaker has given its prior consent to that in writing, and that consent may be given subject to terms and conditions.

(3) Where in consequence of paragraph (2) a statutory undertaker exercises the powers of paragraph (1) in place of the undertaker, except in relation to the payment of compensation the statutory undertaker is to be treated for the purposes of this Order, and by any person with an interest in the land in question, as being the undertaker in relation to the acquisition of the rights and the imposition of the restrictive covenants in question.

(4) In the case of the Order land specified in columns (1) and (2) of Part 1 and Part 2 of Schedule 6 (land in which only new rights etc., may be acquired), the undertaker’s powers of compulsory acquisition under paragraph (1) are limited to the acquisition of such wayleaves, easements, new

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(a) 1981 c.66. Section 4 was amended by sections 184, 185 and Schedule 18 paragraph 2 to the Housing and Planning Act 2016 c.22.

rights in the land or the imposition of such restrictive covenants as the undertaker may require for or in connection with the authorised development for the purposes specified in the corresponding entry in column (3) of Part 1 and Part 2 of Schedule 6 in relation to that land.

(5) The power under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Part 2 of Schedule 6 for the benefit of Cadent—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Part 1 of Schedule 6 as may be required for the benefit of any other statutory undertaker; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Part 1 of Schedule 6 as are required for the benefit of any other statutory undertaker.

(6) Subject to section 8 (other provisions as to divided land) of, and Schedule 2A(a) (counter-notice requiring purchase of land) to, the 1965 Act (as substituted by paragraph 5(11) of Schedule 7 (modification of compensation and compulsory purchase enactments for the creation of new rights), where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) the undertaker is not required to acquire a greater interest in that land.

(7) Schedule 7 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

#### **Acquisition of subsoil and airspace only**

**26.**—(1) The undertaker may acquire compulsorily so much of, or such rights over, the subsoil beneath, or the surface of, or the airspace above, the land referred to in paragraph (1) of article 22 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) In the case of the Order land specified in columns (1) and (2) of Schedule 8 (land in which only airspace and new rights may be acquired) the undertaker's powers of compulsory acquisition under article 22 are limited to—

- (a) the acquisition of such airspace; and
- (b) the acquisition of such easements or other new rights and the imposition of such restrictive covenants over the airspace and the surface of the land,

as the undertaker may require for or in connection with the authorised development.

(3) Where the undertaker acquires any part of, or rights over, the subsoil beneath, or the surface of, or the airspace over land referred to in paragraphs (1) or (2), the undertaker is not required to acquire an interest in any other part of the land.

(4) The following do not apply in connection with the exercise of the power under paragraphs (1) and (2) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by article 31 (modification of Part 1 of the 1965 Act);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and
- (c) section 154(4)(a) (blighted land; proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(5) Paragraphs (3) and (4) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

(6) References in paragraph (2)(a) to airspace are references to the airspace lying at and above the heights specified in column (3) of Schedule 8, which are heights above Ordnance Datum and

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(a) As amended by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

references in paragraph (2)(b) to airspace are references to the airspace lying below the airspace referenced in paragraph (2)(a).

(7) For the purpose of paragraph (6) “Ordnance Datum” means Ordnance Datum Newlyn, which is the national system for height referencing in mainland Great Britain and which forms the reference frame for heights above mean sea level, at the time of this Order coming into force.

### **Private rights over land**

**27.—**(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker whether compulsorily or by agreement; or
- (b) on the date of entry onto land by the undertaker under section 11(1) of the 1965 Act; or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or by the imposition of any restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 34 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given to the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker’s appropriation of it;
  - (iii) the undertaker’s entry onto it; or
  - (iv) the undertaker’s taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

### **Power to override easements and other rights**

**28.**—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of if it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
  - (i) the compensation is to be estimated in connection with a purchase under that Act; or
  - (ii) the injury arises from the carrying out of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

### **Rights over or under streets**

**29.**—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or for any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building, or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Application of the 1981 Act**

**30.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied, has effect with the following modifications.

(3) In section 1 (application of Act) for subsection (2) substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5 (earliest date for execution of declaration) in subsection (2), omit the words from “, and this subsection” to the end.

(5) Omit section 5A(a) (time limit for general vesting declaration).

(6) In section 5B(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118(c) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008”, the five year period mentioned in article 24 of the Lake Lothing (Lowestoft) Third Crossing Order 201[\*]”.

(7) In section 6(d) (notices after execution of declaration) in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(e) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7 (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 26(4) (acquisition of subsoil or airspace only) of the Lake Lothing (Lowestoft) Third Crossing Order 201[\*], which excludes the acquisition of subsoil or airspace only from this Schedule”

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 31 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

### **Modification of the 1965 Act**

**31.**—(1) Part 1 of the 1965 Act, as applied by this Order to section 125 (application of compulsory acquisition provisions) of the 2008 Act is modified as follows.

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- (a) Inserted by section 182(2) of the Housing and Planning Act 2016 (c.22).
  - (b) As inserted by section 202(2) of Schedule 3 to the Housing and Planning Act 2016 (c.22).
  - (c) As amended by paragraphs 1 and 59 of Schedule 13 and Part 20 of Schedule 25, to the Localism Act 2011 (c.20) and section 9(4) of the Criminal Justice and Courts Act 2015 (c.2).
  - (d) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11) and paragraph 7 of Schedule 14 to the Housing and Planning Act 2016 (c.22).
  - (e) As amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2017/16.
  - (f) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c.22).

(2) In section 4A(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 24 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the Lake Lothing (Lowestoft) Third Crossing Order 201[\*]”.

(3) In section 11A(b) (powers of entry: further notice of entry)—

(a) in subsection (1)(a) after “land” insert “under that provision”; and

(b) in subsection (2) after “land” insert “under that provision”

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 24 of the Lake Lothing (Lowestoft) Third Crossing Order 201[\*]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 26(4) (acquisition of subsoil or airspace only) of the Lake Lothing (Lowestoft) Third Crossing Order 201[\*], which excludes the acquisition of subsoil or airspace only from this Schedule”; and

(b) after paragraph 29, insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 16 (protective works to buildings), 32 (temporary use of land for carrying out the authorised development) or 33 (temporary use of land for maintaining the authorised development) of the Lake Lothing (Lowestoft) Third Crossing Order 201[\*].”

#### *Temporary possession of land*

#### **Temporary use of land for carrying out the authorised development**

**32.—**(1) The undertaker may, in connection with the carrying out of the authorised development but subject to article 24(2) (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily)—

(a) enter on and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 9 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

(ii) any of the Order land in respect of which no notice of entry has been served under section 11(c) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(d) (execution of declaration) of the 1981 Act,

and—

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(a) As inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(b) As inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).

(c) As amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing Consequential Provisions Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measures 2006 (No.1) and the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).

(d) As amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c.22).

- (b) remove any buildings and vegetation from the land referred to in sub-paragraphs (a)(i) to (ii);
- (c) construct temporary works (including the provisions of means of access) and buildings on the land referred to in sub-paragraphs (a)(i) to (ii); and
- (d) construct any works on the land referred to in sub-paragraphs (a)(i) to (ii) as are mentioned in Schedule 1 (authorised development).

(2) Not less than three months (or such other period agreed in writing between the undertaker and the owner of the land) before entering on and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the works, facilities or other purpose for which the undertaker intends to take possession of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of any land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 9;
- (b) in the case of any land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the works, use of facilities or other purpose for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land; or
- (c) in the case of any land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the authorised development.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) Any person who suffers loss as a result of the suspension of any private right of navigation under this article is entitled to be paid compensation for such loss by the undertaker, to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions of the 2008 Act).

### **Temporary use of land for maintaining the authorised development**

**33.**—(1) Subject to paragraph (3), at any time during the maintenance period relating to any of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than three months (or such other period agreed in writing between the undertaker and the owner of the land) before entering upon and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the purpose for which the undertaker intends to take possession of the land including the particulars of the part of the authorised development for which possession is to be taken.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) Any person who suffers loss as a result of the suspension of any private right of navigation under this article is entitled to be paid compensation for such loss by the undertaker, to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of any works, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

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(a) As amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).



(12) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which—

- (a) that part of the authorised development is first opened for public use (where that part of the authorised development is intended to be used by the public); or
- (b) in respect of any other part of the authorised development, that part is first brought into operational use by the undertaker.

### *Supplementary*

#### **Statutory undertakers and utilities**

**34.**—(1) Subject to the provisions of article 25(4) (compulsory acquisition of rights), Schedule 13 (protective provisions) and paragraph (2), the undertaker may—

- (a) exercise the powers conferred by articles 22 (compulsory acquisition of land) and 25 (compulsory acquisition of rights) in relation to so much of the Order land as belongs to statutory utilities; and
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory utilities over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) article 35 (apparatus and rights of statutory undertakers in stopped up streets).

#### **Apparatus and rights of statutory undertakers in stopped up streets**

**35.**—(1) Where a street is stopped up under article 10 (permanent stopping up of streets and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 10 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the carrying out of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the carrying out of the relocation works.

(4) If in the course of the carrying out of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the carrying out of the relocation works exceeding that which would have been involved if the apparatus placed

had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article “relocation works” means work carried out, or apparatus provided, under paragraph (2).

### **Recovery of costs of new connection**

**36.—**(1) Where any apparatus of a statutory utility is removed under article 34 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 34, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 35 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

### *Compensation*

### **Disregard of certain interests and improvements**

**37.—**(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or

- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works carried out or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

### **Set-off for enhancement in value of retained land**

**38.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 25 (compulsory acquisition of rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

### **No double recovery**

**39.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

## **PART 4**

### **OPERATIONAL PROVISIONS**

#### **Operation of the new bridge**

**40.**—(1) The undertaker must operate the new bridge in accordance with the Scheme of Operation.

(2) The Scheme of Operation may be varied or replaced by the undertaker at any time, following consultation with the Navigation Working Group and with the consent of the harbour authority (such consent not to be unreasonably withheld) or following a request by the harbour authority.

(3) Before proposing any variation or replacement of the Scheme of Operation under paragraph (2) the undertaker must carry out a review of the navigation risk assessment under Requirement 11(4) and, if the undertaker considers, in consultation with the harbour authority, that circumstances require, update it.

(4) When proposing any variation or replacement of the Scheme of Operation under paragraph (2), the undertaker must provide to the harbour authority and the Navigation Working Group information relating to the outcome of the review of the navigation risk assessment carried out by virtue of paragraph (3) including (if applicable) the updated risk assessment.

(5) If the consent of the harbour authority required under paragraph (2) is—  
(a) not given within 21 days of the submission to the harbour authority of a varied or replacement scheme of operation; and

(b) the undertaker has not granted the harbour authority an extension of time to give its consent, then the proposed varied or replacement scheme of operation must be submitted by the undertaker to the Secretary of State for approval.

(6) Any submission by the undertaker to the Secretary of State under paragraph (5) must also include a report setting out any comments of the Navigation Working Group and the harbour authority given in response to the undertaker proposing a variation or replacement of the Scheme of Operation under paragraph (2) or in response to any consultation carried out under Requirement 11(4).

(7) Following submission of the varied or replacement scheme of operation to the Secretary of State for approval under paragraph (5), the harbour authority may still grant its consent to the varied or replacement scheme of operation at any time prior to the Secretary of State's determination, but if the harbour authority does so it must on the same day inform the undertaker and the Secretary of State of its consent.

(8) The undertaker must take such steps as it considers appropriate to publish details of the scheme of operation, not less than 21 days prior to the new bridge opening for public use or, in relation to any scheme of operation varied or replaced under paragraph (2), at such times and with such prior notice as the undertaker considers appropriate in consultation with the harbour authority.

(9) Article 60 (arbitration) does not apply to any dispute arising under this article.

#### **Extinguishment of right of navigation within Lake Lothing in connection with authorised development**

**41.**—(1) For the purpose of protecting the new bridge, the public right of navigation within the areas of Lake Lothing identified in paragraph (2) is extinguished in accordance with the provisions of this article.

(2) The areas referred to in paragraph (1) are—

- (a) in relation to the pier located to the south of the north quay of Lowestoft Harbour, the area between the north quay wall and the outer edge of the fenders surrounding that pier; and
- (b) in relation to the pier located to the north of the south quay of Lowestoft Harbour, the area between the south quay wall and the outer edge of the fenders surrounding that pier.

(3) Paragraph (1) does not take effect until the undertaker has, following practical completion of the new bridge—

- (a) notified the harbour authority of the date from which the extinguishment is to have effect;
- (b) published notice of the extinguishment and the date from which the extinguishment is to have effect in *Lloyd's List* and once in each of two successive weeks in a local newspaper published or circulating in the area of East Suffolk Council, with an interval between the earliest and latest notices of not less than 7 clear days; and
- (c) displayed notice of the extinguishment and the date from which the extinguishment is to have effect in a conspicuous position adjacent to Lake Lothing from the date of the first notice published under sub-paragraph (b) above, until at least 7 days after the last notice published under sub-paragraph (b).

(4) The date that is notified, published and displayed pursuant to paragraph (3) as the date from which the extinguishment is to have effect must not be earlier than 14 days after the last date on which a notice is published pursuant to paragraph (3).

(5) As soon as possible following receipt by the harbour authority of notice given by the undertaker under paragraph (3), the harbour authority must issue a notice to mariners giving the commencement date and other particulars of the extinguishment to which the notice relates.

(6) A master of a vessel other than a vessel—

- (a) which is under the control of the harbour authority;
- (b) which is carrying out the statutory functions of the harbour authority, or
- (c) is directed by the harbour master,

must not, except in an emergency, allow a vessel to enter into the areas referred to in paragraph (2) without first obtaining the consent of the undertaker, which may attach reasonable conditions to any consent.

(7) Before granting consent under paragraph (6), the undertaker must consult with the harbour master.

### **Maintenance of authorised development**

**42.**—(1) The undertaker may at any time maintain the authorised development except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) Paragraph (1) does not extend to any maintenance works which would give rise to any materially new or materially different environmental effects than those assessed in the environmental statement.

### **Subsidiary works and operations in Lake Lothing**

**43.**—(1) Subject to the provisions of this Order the undertaker may within the Order limits—

- (a) carry out and maintain works for the accommodation or convenience of vessels within Lake Lothing (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons) as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the operation or maintenance of the authorised development; and
- (b) deepen, widen, capital dredge, maintenance dredge, scour, cleanse, alter and improve the bed of Lake Lothing for the purposes of maintaining the authorised development.

(2) Paragraph (1) does not extend to any works which would give rise to any materially new or materially different environmental effects than those assessed in the environmental statement.

(3) Except in the case of emergency, before exercising the powers of paragraph (1), the undertaker must use reasonable endeavours to notify the owner of any mooring and the owner or master of any vessel that may be affected by works undertaken in the exercise of the powers under this article.

(4) The undertaker must pay compensation to any person entitled to compensation under the 1961 Act who suffers any loss or damage from the exercise of the powers conferred by paragraph (1).

(5) Any dispute as to a person's entitlement to compensation under paragraph (4) or as to the amount of the compensation must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) All materials dredged up or removed by the undertaker in exercise of the powers of this article are the property of the undertaker and may be used, sold, deposited or otherwise disposed of by the undertaker.

### **Protection against dredging by the harbour authority**

**44.**—(1) The harbour authority must not undertake a capital dredge in Lake Lothing within the limits of dredging without first submitting the plans of the proposed dredging operation to the undertaker for its approval.

(2) Approval under paragraph (1) is not to be unreasonably withheld and is deemed to have been granted if it is neither granted nor refused within 28 days of the submission of the plans.

(3) The harbour authority must carry out the dredging in accordance with the plans approved under this article or settled by arbitration under article 60 (arbitration).

(4) The harbour authority must notify the undertaker at least 7 days before undertaking any maintenance dredge in Lake Lothing within the limits of dredging.

## Byelaws

45.—(1) The undertaker may make byelaws regulating the use and operation of the new bridge and the new bridge infrastructure, the maintenance of order and the conduct of persons in the new bridge area and the mooring of vessels to, and the passage of vessels under, the new bridge.

(2) Without limiting the scope of paragraph (1), byelaws made under this article may make provision—

- (a) preventing interference with, or obstruction of, the operation of the new bridge, including from vessels or other facilities machinery apparatus tools or other things provided in connection with the operation of the new bridge;
- (b) preventing interference with the new bridge or the new bridge infrastructure;
- (c) preventing trespass in the new bridge area;
- (d) preventing nuisances on the new bridge or in the new bridge area;
- (e) requiring any person in charge of a motor vehicle which is at rest by reason of breakdown on any part of the new bridge or the new bridge approaches to report that fact and the position and circumstances in which the vehicle is at rest to the undertaker;
- (f) prohibiting any person, other than an appointed person—
  - (i) from carrying out, or attempting to carry out a repair, adjustment or refuelling of such a vehicle to which sub-paragraph (e) applies except with permission expressly given by an appointed person; and
  - (ii) from moving, or attempting to move, such a vehicle from the position in which it is at rest;
- (g) prohibiting a person from obstructing any action taken by an appointed person for the purpose of removing a vehicle;
- (h) ensuring the safety of vehicles passing over the new bridge and through the new bridge area; and
- (i) placing controls on the mooring and passage of vessels.

(3) The undertaker must consult the harbour authority before making byelaws under paragraph (1) and in the case of a byelaw the purpose of which is to control the navigation or mooring of vessels in the Order limits, must not make the byelaw without the consent of the harbour authority (such consent not to be unreasonably withheld).

(4) The byelaws in Schedule 10 have effect until such time as they are amended or revoked by byelaws made under paragraph (1) and in the meantime they are to be treated as if they had been made by the undertaker under that paragraph and approved by the harbour authority under paragraph (3).

(5) From the date that this Order comes into force, the Lowestoft Harbour Byelaws 1993(a) are amended as follows —

- (a) in Byelaw 4 (interpretation) the following definitions are added—
  - ““the Order” means the Lake Lothing (Lowestoft) Third Crossing Order 201[\*];
  - ““the new bridge” means the bridge authorised by Work No.1 in Schedule 1 to the Order”;
  - ““the new bridge control building” means the bridge control building authorised by Work No. 6 in Schedule 1 to the Order”;
  - ““the new bridge infrastructure” means the infrastructure elements supporting the new bridge including (without limitation) the cables, drainage, electricity and water supplies, and fenders relating to the new bridge, as well as any plant and machinery and any emergency, safety or communications equipment required for the construction, maintenance or operation of the new bridge”;

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(a) Byelaws for the Port of Lowestoft made by the harbour authority under section 83 of the Harbours, Docks and Piers Clauses Act 1847 (1847 c.27) (incorporated by section 51 of the British Transport Docks Act 1964 (1964 c.38)) and by section 52 of the British Transport Docks Act 1964.

““the new bridge undertaker” means Suffolk County Council or a person to whom the benefit of the relevant provisions of the Order has been transferred under article 48 of the Order”

““the Scheme of Operation” means the Scheme of Operation having effect from time to time under article 40 of the Order””; and

- (b) after Part IV (Conduct of Persons on Harbour) insert—

## “PART IVA

### NEW BRIDGE CONTROLS ON VESSELS

#### **Mooring of vessels**

**37A.** A master of a vessel must not moor the vessel—

- (a) to any pier or any other part of the new bridge or the new bridge infrastructure; or
- (b) in the vicinity of the new bridge if to do so might damage the new bridge or the new bridge infrastructure, or impede its operation in accordance with the Scheme of Operation,

without the prior consent of the new bridge undertaker.

#### **Observation of signals and communications**

**37B.** A master of a vessel must observe and comply with the river traffic control signal lights exhibited from the new bridge and follow any instructions issued by the new bridge undertaker.

**37C.** A master of a vessel approaching or departing the new bridge must make every reasonable effort to maintain continuous contact with the new bridge undertaker within the new bridge control building on VHF channel 14 or (if this becomes obsolete) such other means of communication instructed by the new bridge undertaker.

**37D.** A master of a vessel awaiting passage under the new bridge must—

- (a) stay clear of the centre channel of Lake Lothing;
- (b) give transiting vessels sufficient room to manoeuvre; and
- (c) ensure that that the vessel does not advance beyond the outer edge of the fenders surrounding the new bridge until instructed to proceed by the new bridge undertaker.

#### **Passage of vessels under the new bridge**

**37E.** Unless otherwise directed by the harbour master, a master of a vessel must direct the vessel to pass under the new bridge by navigating between the two bridge piers which are within Lake Lothing, and must not allow the vessel to pass between a pier and the nearest quay wall of Lowestoft Harbour.

#### **Collision with the new bridge**

**37F.** A master of a vessel which has been involved in a collision with the new bridge must, as soon as reasonably practicable, report the occurrence to the new bridge undertaker and as soon as reasonably practicable thereafter provide the new bridge undertaker with details of the collision in writing.”

- (6) The harbour authority must not—

- (a) amend or revoke the byelaws inserted into the Lowestoft Harbour Byelaws 1993 by paragraph (5); or

(b) make byelaws which affect the new bridge, the new bridge infrastructure or impede operation of the new bridge in accordance with the Scheme of Operation, without first obtaining the consent of the undertaker, such consent not to be unreasonably withheld.

(7) Where there is any inconsistency between the provisions of the Lowestoft Harbour Byelaws 1993 as amended by paragraph (5) or any other byelaws made by the harbour authority and the byelaws made by the undertaker under paragraph (1), the byelaws made by the undertaker under paragraph (1) prevail.

(8) Subject to paragraph (9) the provisions of subsections 236(3) to (8), and (11) of the Local Government Act 1972(a) (procedure etc., for byelaws) apply in relation to byelaws made by the undertaker under paragraph (1).

(9) The undertaker may make byelaws under paragraph (1) in accordance with the procedure in the Byelaws (Alternative Procedure) (England) Regulations 2016(b) as if those regulations applied to the making, amending and revoking of byelaws under that paragraph.

(10) Byelaws made under this article are enforceable as follows—

- (a) in the case of byelaws made under paragraph (1), by an appointed person; or
- (b) in the case of the amendments to the Lowestoft Harbour Byelaws 1993 which have effect under paragraph (5), by an appointed person or the harbour authority.

(11) A person who breaches a byelaw made under paragraph (1) or (3) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(12) Where damage to the new bridge is attributable to a person in charge of a vessel being in breach of a byelaw made under paragraph (1), or the amendments to the Lowestoft Harbour Byelaws 1993 which have effect under paragraph (5), the undertaker may recover all expenses reasonably incurred in repairing the damage as a debt.

(13) The harbour authority must, within ten days of the receipt of such a request provide all information reasonably requested by the undertaker where the undertaker reasonably suspects that a breach of a byelaw made under paragraph (1) or the amendments to the Lowestoft Harbour Byelaws 1993 which have effect under paragraph (5) has been committed by a person in charge of a vessel.

(14) In this article—

“breakdown” in relation to a motor vehicle, includes mechanical defect, lack of fuel, oil or water required for the vehicle, and any other circumstances in which a person in charge of the vehicle could not immediately, safely and without damage to the vehicle or its accessories, drive it under its own power away from the new bridge; and

“prescribed” means prescribed by byelaws made under paragraph (1).

### **Fixed penalty notices**

**46.—**(1) This article applies where it appears to an appointed person, or in the case of a byelaw having effect by virtue of article 45(5), the harbour authority, that a person has committed an offence as a result of byelaws made under article 45.

(2) The appointed person may serve on that person a fixed penalty notice in respect of the offence.

(3) Where a person is given a fixed penalty notice under this article in respect of an offence—

- (a) no proceedings may be instituted for that offence before the expiration of 14 days after the date of the notice; and
- (b) that person may not be convicted of the offence if the fixed penalty is paid before the expiration of 14 days after the date of the notice.

(4) A fixed penalty notice must state—

- (a) the amount of the fixed penalty;

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(a) 1972 c.70.

(b) S.I. 2016/165.



- (b) particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence;
  - (c) the time by which and the manner (including the number to be used for payments by credit or debit card) in which the fixed penalty must be paid; and
  - (d) that proceedings may be instituted if payment is not made within the time specified in the fixed penalty notice.
- (5) The amount of the fixed penalty is—
- (a) one fifth of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction provided that person pays the fixed penalty in full within 7 days of issue of the fixed penalty notice; or
  - (b) one half of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction.
- (6) An appointed person may require a person to whom this article applies to pay a deposit of one tenth of the maximum amount of the fine to which a person may be liable under level 3 on the standard scale on accepting a fixed penalty notice if that person fails to provide, when requested, a residential address in the United Kingdom.
- (7) Payment of the deposit must be made—
- (a) in person to the appointed person by cash, credit or debit card, if the appointed person has the necessary means to accept payment in that manner;
  - (b) by telephone by credit or debit card to the number stipulated in the fixed penalty notice for making payments; or
  - (c) by App.
- (8) The undertaker must apply the deposit towards payment of the fixed penalty.
- (9) In any proceedings a certificate which—
- (a) purports to be signed on behalf an officer of the undertaker appointed under section 151 of the Local Government Act 1972; and
  - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

- (10) In this article—

“App” means a software application for use on an electronic device which provides for payment by credit or debit card and which is provided by the undertaker for that purpose;

“credit card” means a card or similar thing issued to any person, use of which enables the holder to defer payment of the deposit;

“debit card” means a card or similar thing issued by any person, use of which causes the deposit to be paid by the electronic transfer of funds from any current account of the holder at a bank or other institution providing banking facilities; and

“fixed penalty notice” means a notice offering the opportunity of the discharge of liability to conviction of an offence under byelaws made under article 45.

## PART 5

### MISCELLANEOUS AND GENERAL

#### **Benefit of Order**

47.—(1) Subject to article 48 (transfer of benefit of Order etc.) and paragraph (2), the provisions of this Order conferring functions on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express protection, benefit or accommodation of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

#### **Transfer of benefit of Order, etc.**

**48.**—(1) The undertaker may, with the consent of the Secretary of the State—

- (a) transfer to another person (“the transferee”) any or all of the benefits of the provisions of this Order that apply to that transferor; and such statutory rights as may be agreed between the transferor and the transferee; or
- (b) grant to another person (“the grantee”) for a period agreed between the transferor and the grantee any or all of the benefit of the provisions of this Order that apply to that transferor and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in the provisions of this Order that apply to the undertaker must include references to the transferee or the grantee, as the case may be.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State under this article is not required—

- (a) where the transfer of any provisions of this Order is to be made between the undertaker and the harbour authority or the harbour master; or
- (b) where the powers of article 25(1) are, with the consent of the undertaker given under article 25(2), proposed to be exercised by a statutory undertaker rather than by the undertaker.

(5) The undertaker must notify the MMO of any transfer of benefit made by the undertaker under this article.

#### **Planning permission**

**49.** If planning permission is granted under the 1990 Act after this Order comes into force for development partly or wholly within the Order limits and which is not—

- (a) itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the authorised development,

then the carrying out, use or operation of that development under the terms of the planning permission does not constitute a breach of the terms of this Order.

#### **Saving for undertaker’s highway and planning functions**

**50.** Except as expressly provided, nothing in this Order is to prejudice the rights, powers and duties of the undertaker under the 1980 Act, the 1990 Act and the 1991 Act in relation to the highways constructed as part of the authorised development.

#### **Application of landlord and tenant law**

**51.**—(1) This article applies to any agreement entered into by the undertaker under article 48 (transfer of benefit of Order, etc.) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Traffic regulation measures**

**52.**—(1) Subject to the provisions of this article, the undertaker may, for the purposes of the authorised development—

- (a) make provision, in respect of those roads specified in column (2) of Part 1 of Schedule 11 (traffic regulation measures, etc.), as to the speed limit and restricted road status of those roads as specified in column (3) of that Part of that Schedule;
- (b) make provision, in respect of those roads specified in column (2) of Part 2 of Schedule 11, as to the permitting, prohibition or restriction of the stopping, waiting, parking, loading or unloading of vehicles as specified in column (3) of that Part of that Schedule;
- (c) make provision, in respect of those roads specified in column (2) of Part 3 of Schedule 11, as to prescribed routes to apply to those roads as specified in column (3) of that Part of that Schedule;
- (d) in respect of those roads specified in column (2) of Part 3 of Schedule 11, revoke or vary the orders specified in column (3) of that Part of that Schedule in the manner specified in column (4) of that Part of that Schedule; and
- (e) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this paragraph.

(2) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011<sup>(a)</sup> when used in accordance with regulation 3(5) of those regulations.

(3) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) as to the speed at which vehicles may proceed along any road;
- (c) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (d) authorise the use as a parking place of any road;
- (e) make provision as to the direction or priority of vehicular traffic on any road; and
- (f) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(4) The power conferred by paragraph (3) may be exercised at any time prior to the expiry of 24 months from the opening of the new bridge for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (3) may have effect both before and after the expiry of that period.

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(a) S.I. 2011/935.

(5) The undertaker must not exercise the powers conferred by paragraph (1) or (3) unless the undertaker has—

(a) given not less than—

(i) 12 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 14 days notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated and that notice must include the time periods within which the traffic authority may specify the manner in which, under sub-paragraph (b) the undertaker must advertise its intention to exercise the powers conferred by paragraph (1) or (3); and

(b) advertised the undertaker's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i) or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (3)—

(a) has effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject;

(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act.

(c) must be advertised in the same manner as the undertaker's intention to make the prohibition, restriction or other provision was under paragraph (5)(b).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker by subsequent exercise of the powers conferred by paragraph (1) or (3) within a period of 24 months from the opening of the new bridge for public use.

(8) Before exercising the powers conferred by paragraphs (1) or (3) the undertaker must consult such persons as the undertaker considers necessary and appropriate and have regard to the representations made to the undertaker by any such person.

(9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

## **Clearways**

**53.**—(1) From such day as the undertaker may determine, except as provided in paragraph (2) below, no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 2 (clearways and prohibitions) of Schedule 11 (traffic regulation measures) where it is identified that such lengths of road are to become a clearway in the corresponding row of column (3) of that Part, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) Nothing in paragraph (1) above applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of a road for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance, improvement, reconstruction or operation of the road;

- (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity, or any electronic communications apparatus as defined in Schedule 3A (the Electronic Communications Code) to the Communications Act 2003(a); or
- (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
  - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
  - (ii) in the service of a local authority, safety camera partnership or Drive and Vehicle Standards Agency in pursuance of statutory powers or duties;
  - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or
  - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
  - (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or
  - (iii) prevented from proceeding by circumstances outside the person’s control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

**Deemed marine licence**

54. The undertaker is granted a deemed marine licence under Part 4 (marine licensing) of the 2009 Act to carry out the activities specified in Part 1 of Schedule 12 (deemed marine licence), subject to the conditions set out in Parts 2 to 4 of that Schedule.

**Defence to proceedings in respect of statutory nuisance**

55.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisance) of the Environmental Protection Act 1990(d) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(e); or

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(a) 2003 c.21. Schedule 3A was inserted by section 4 of, and Schedule 1 to, the Digital Economy Act 2017.  
 (b) 1991 c.56  
 (c) 2000 c.26  
 (d) 1990 c.43. There are amendments to this Act which are not relevant to this Order.  
 (e) 1974 c.40. Section 61(9) was amended by paragraph 1 of Schedule 24 to the Environment Act 1995 c.25 and by section 162(1) and paragraph 15(3) of Schedule 14 to the Environmental Protection Act 1990 c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

- (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
  - (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably be avoided.
- (2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protective provisions**

56. Schedule 13 (protective provisions) has effect.

### **Saving for Trinity House**

57. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

### **Certification of documents**

58.—(1) As soon as practicable after the making of this Order, copies of each of the plans and documents identified in Schedule 14 (documents to be certified) must be certified by the Secretary of State as true copies of those documents.

(2) Where any document identified in Schedule 14 requires to be amended to reflect the terms of the Secretary of State's decision to make this Order, that document in the form amended to the Secretary of State's satisfaction is the version of the document required to be certified under paragraph (1).

(3) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(4) The undertaker must, following certification of the plans and documents in accordance with paragraph (1) make those plans and documents available in electronic form for inspection by members of the public.

### **Service of notices**

59.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (9) by electronic transmission.

(2) Subject to paragraph (3), where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) Notices to the harbour authority served by the methods set out in paragraph 1(a) or (b) must be served to the following locations:

- (a) Associated British Ports, 25 Bedford Street, London WC2E 9ES; and
- (b) Port of Lowestoft, North Quay Cargo Terminal, Commercial Road, Lowestoft, NR32 2TE.

(4) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service

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(a) 1978 c.30.

on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(5) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(6) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(7) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(8) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (9).

(9) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(10) This article must not be taken to exclude the employment of any method of service not expressly provided for by it.

(11) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

## **Arbitration**

**60.**—(1) Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

(2) Any arbitration to be undertaken under paragraph (1) must be carried out using the same process as is set out in sub-paragraphs (2)(d) to (f), (4) to (8) and (12) of paragraph 19 of Schedule 2 subject to the modifications set out in paragraph (3).

(3) The modifications referred to in paragraph (2) are that references in those provisions of Schedule 2 to each of the terms set out in column (1) of the following table are replaced by the corresponding term in column (2) of the table:

<i>(1)</i>	<i>(2)</i>
the adjudicator	the arbitrator appointed under article 60(1)
the appeal	the difference referred to arbitration
the discharging authority	the person or body with whom the difference with the undertaker referred to arbitration exists.

**Consents, agreements, certifications and approvals**

**61.**—(1) Where any application is made to a relevant authority, the consent, agreement or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was received, the relevant authority is deemed to have given its consent, certification, agreement or approval, as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) In this article—

“application” means an application or request for any consent, agreement or approval required or contemplated by articles 6 (street works), 8 (construction and maintenance of new, altered or diverted streets), 11 (temporary stopping up and restriction of use of streets), 12 (access to works), 15 (discharge of water), 17 (authority to survey and investigate land) and 52 (traffic regulation measures); and

“relevant authority” means a planning authority, a traffic authority, a highway authority or a street authority.

Signed by authority of the Secretary of State for Transport

Address  
Date

*Name*  
*Title*  
Department for Transport



# SCHEDULES

## SCHEDULE 1

Articles 2 and 4

### AUTHORISED DEVELOPMENT

#### **In the administrative area of East Suffolk Council**

a development which, in accordance with a direction made by the Secretary of State for Transport on 22 March 2016 under section 35 of the 2008 Act, is development for which development consent is required, and associated development within the meaning of section 115(2) of the 2008 Act, comprising—

**Work No. 1** – as shown on sheets 1 and 2 of the works plans and being the construction of new highway comprising –

- (a) Work No. 1A
  - (i) the construction of new highway comprising carriageway and cycleway and forming the new bridge northern approach;
  - (ii) the construction of a new roundabout, together with related approach roads and adjacent cycleways;
  - (iii) the construction of earth embankments supporting the new highway;
  - (iv) the construction of a building to accommodate electrical plant and the installation of electrical apparatus; and
  - (v) associated landscaping.
- (b) Work No. 1B
  - (i) the construction of new highway comprising carriageway and cycleway;
  - (ii) the construction of a bridge deck supporting the new highway;
  - (iii) the construction of an abutment and pier supporting the new bridge deck;
  - (iv) the construction of piles and pile caps supporting the abutment and pier; and
  - (v) the construction of new private means of access as shown on sheet 1 of the rights of way and access plans.
- (c) Work No. 1C
  - (i) the construction of new highway comprising carriageway and cycleway;
  - (ii) the construction of a bridge deck supporting the new highway;
  - (iii) the construction of piers supporting the new bridge deck;
  - (iv) the construction of piles and pile caps supporting the piers; and
  - (v) the construction of new private means of access as shown on sheet 1 of the rights of way and access plans.
- (d) Work No. 1D
  - (i) the construction of new highway comprising carriageway and cycleway;
  - (ii) the construction of a bridge deck supporting the new highway;
  - (iii) the construction of piers within the watercourse supporting the new bridge deck;
  - (iv) the construction of piles and pile caps within the watercourse supporting the piers and fendering;
  - (v) the construction of an opening section of bridge and associated barriers and signage; and
  - (vi) the construction of fendering within the watercourse.

- (e) Work No. 1E
  - (i) the construction of new highway comprising carriageway and cycleway and forming the new bridge southern approach;
  - (ii) the construction of a bridge deck supporting the new highway;
  - (iii) the construction of abutments and piers supporting the new bridge deck;
  - (iv) the construction of piles and pile caps supporting the abutments and piers;
  - (v) the construction of earth embankment with retaining walls to support the new highway;
  - (vi) the construction of new private means of access as shown on sheet 2 of the rights of way and access plans; and
  - (vii) the improvement of existing highways, including realignment, to facilitate tie-ins to Work No. 2

**Work No. 2** – as shown on sheet 2 of the works plans and being the alteration of the existing highway comprising:

- (f) the construction of a new roundabout, together with related approach roads and adjacent cycleways;
- (g) the improvement of existing highways, including realignment, to facilitate tie-ins to the works referred to at paragraph (f) above and the construction of new private means of access to premises as shown on sheet 2 of the rights of way and access plans; and
- (h) construction of new turning head on Durban Road and provision of adjacent cycleway.

**Work No. 3** – as shown on sheet 1 of the works plans and comprising:

- (i) the improvement of existing highways and the provision of new cycleways, including the realignment of existing highways to facilitate tie-ins to Work No. 1A; and
- (j) the construction of new private means of access as shown on sheet 1 of the rights of way and access plans.

**Work No. 4** – as shown on sheet 2 of the works plans and being the construction of new highway comprising carriageway and cycleway and including the construction of a new turning head, to provide access to existing premises including the construction of new private means of access to premises as shown on sheet 2 of the rights of way and access plans.

**Work No. 5** – as shown on sheet 2 of the works plans and comprising:

- (k) the construction of new highway comprising carriageway and cycleway to provide access to existing premises including the construction of new private means of access to premises as shown on sheet 2 of the rights of way and access plans; and
- (l) the improvement of existing highways, including realignment, to facilitate tie-ins to the existing highway network and Work No.4 and the construction of new private means of access to premises as shown on sheet 2 of the rights of way and access plans.

**Work No. 6** – as shown on sheet 2 of the works plans and being the construction of a new control tower building area for the new bridge comprising –

- (m) the construction of a new control tower building for the operation of the lifting section of the new bridge;
- (n) the construction of a new electrical substation and plant room; and
- (o) the construction of new highway to provide a new access road and parking facilities for the new control tower building and electrical substation and plant room referred to in paragraphs (m) and (n), and to accommodate the new private means of access being as shown on sheet 2 of the rights of way and access plans.

**Work No. 7** – as shown on sheet 2 of the works plans and being the construction of a new mooring within Lowestoft Harbour.

And for the purposes of or in connection with the construction of any of the works and other development mentioned above, ancillary or related development which does not give rise to any materially new or materially different effects than those assessed in the environmental statement, consisting of—

works within highways, including—

- (p) alteration of the layout of any street permanently or temporarily, including increasing the width of the carriageway of any street by reducing the width of any kerb, footway, cycleway, or verge within the street; and altering the level or increasing the width of any such kerb, footway, cycleway or verge within the street, works for the strengthening, improvement, repair, maintenance or reconstruction of any street;
- (q) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;
- (r) relocation or provision of new road traffic signs, signals, street lighting and carriageway lane markings; and
- (s) works to place, alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street, including mains, sewers, drains, pipes, cables, cofferdams, lights, fencing and other boundary treatments;

works within Lake Lothing (to the extent they are situated within the Order limits) to—

- (t) alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure (including lake walls);
- (u) carry out excavations and clearance, deepening, scouring, cleansing, dumping and pumping operations;
- (v) carry out dredging, which may include such dredging works as may be required to provide side slopes or otherwise secure the dredged area against siltation, scouring or collapse;
- (w) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(a)) obtained in carrying out any such operations;
- (x) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);
- (y) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of the lake;
- (z) construct, place and maintain works and structures including piled fenders, protection piles and cofferdams; and
- (aa) provide lighting, signage and aids to navigation,

other works and development—

- (bb) for the strengthening, alteration or demolition of any building;
- (cc) to place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to statutory undertakers, utility companies and others in, under or above land, including mains, sewers, drains, pipes, cables, lights, cofferdams, fencing and other boundary treatments including bollards;
- (dd) ramps, steps, footpaths, footways, cycle tracks, cycleways, bridleways, equestrian tracks, non-motorised user routes or links, byways open to all traffic and crossing facilities;
- (ee) embankments, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, drainage works, outfalls, pollution control devices, pumping stations, culverts, wing walls, fire suppression system water tanks and associated plant and equipment, highway lighting and fencing;

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(a) 1995 c.21

- (ff) settlement mitigation measures for the benefit or protection of, or in relation to, any land, building or structure, including monitoring and safeguarding of existing infrastructure, utilities and services affected by the authorised development;
- (gg) to alter the course of, or otherwise interfere with, navigable or non-navigable watercourses;
- (hh) landscaping, noise barriers, works associated with the provision of ecological mitigation, and other works to mitigate any adverse effects of the construction, operation or maintenance of the authorised development;
- (ii) areas of hard or soft landscaping works, or public realm, at various locations adjacent to the proposed highway and associated works;
- (jj) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, works of demolition, including demolition of existing structures, and the creation of alternative highways or footpaths) and earthworks (including soil stripping and storage and site levelling);
- (kk) construction compounds and working sites, temporary structures, storage areas (including storage of spoil and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences;
- (ll) service compounds, plant and equipment rooms, offices, staff mess rooms, welfare facilities, and other ancillary and administrative accommodation;
- (mm) for the benefit or protection of the authorised development; and
- (nn) of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development.

## SCHEDULE 2 REQUIREMENTS

Article 4

### PART 1 REQUIREMENTS

#### **Interpretation**

##### **1. In this Schedule—**

“the county planning authority” means Suffolk County Council in its role as county planning authority for the county of Suffolk under section 1(1)(a) of the Town and Country Planning Act 1990(a);

“the drainage strategy” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the drainage strategy for the purposes of this Order and which sets out the principles for the design and mitigation measures associated with the drainage of the authorised development;

“the interim code of construction practice” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the code of construction practice for the purposes of this Order and which sets a framework to control impacts arising from construction of the authorised development;

“the landscaping plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the landscaping plans for the purposes of this Order and which set out the principles for the proposed landscaping to be implemented as part of the authorised development;

“the ground investigation report” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the ground investigation report for the purposes of this Order;

“the highway lighting plan” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the highway lighting plan for the purposes of this Order and which set out the proposed highway lighting to be implemented as part of the authorised development;

“the new bridge operating signals risk assessment” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the new bridge operating signals risk assessment for the purposes of this Order;

“the piling works risk assessment” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the piling works risk assessment for the purposes of this Order;

“the scheme-wide written scheme of investigation” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the scheme-wide written scheme of investigation for the purposes of this Order and which sets out the framework to control the impacts of the authorised development on heritage assets; and

“the transport assessment” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as transport assessment for the purposes of this Order and which sets out an assessment of the impact of the Scheme on the surrounding highway network.

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(a) 1990 c.8.

### **Time limit for commencement of the authorised development**

2. The authorised development must commence within 5 years of the date on which this Order comes into force.

### **Design of the authorised development**

3.—(1) The authorised development must be designed and implemented in general accordance with the general arrangement plans.

(2) Prior to the commencement of the authorised development the undertaker must submit to the county planning authority a final version of the design guidance manual for approval.

(3) The county planning authority must consult the local planning authority before approving the final version of the design guidance manual under sub-paragraph (2).

(4) The final version of the design guidance manual submitted under sub-paragraph (2) must be in accordance with the interim design guidance manual.

(5) The authorised development must be designed and implemented in accordance with the final version of the design guidance manual approved under sub-paragraph (2).

(6) No part of the authorised development which comprises the construction or improvement of a highway may commence until written details of those works have been approved by the county planning authority.

(7) For the purposes of paragraph (6) “written details” means—

- (a) highway cross-sections and long sections;
- (b) details of earthworks, pavement construction, materials, carriageway layout, footways and cycleways, road restraints, road markings, traffic signs, traffic signals, crossing facilities, and street lighting;
- (c) details of approach ramps, engineered fill, retaining structures, piles and foundations where those details have not already been submitted by the undertaker to the county planning authority as part of a scheme bridge approval in principle report pursuant to Volume 1 Section 1 Part BD2/12 (Technical Approval of Highways Structures) of Highways England's Design Manual for Roads and Bridges; and
- (d) any other details requested by the county planning authority prior to or within 14 days of receiving a submission by the undertaker under paragraph (6).

### **Code of construction practice**

4.—(1) No part of the authorised development may commence until a code of construction practice for that part of the authorised development has been submitted to the county planning authority by the undertaker following consultation with the Environment Agency and the local planning authority and the submitted code of construction practice has been approved by the county planning authority.

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

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

### **Landscaping scheme**

5.—(1) No part of the authorised development may commence until a written landscaping scheme for the authorised development has been submitted to the county planning authority by the undertaker following consultation with the local planning authority and the written landscaping scheme has been approved in writing by the county planning authority.

(2) Any landscaping scheme prepared under sub-paragraph (1) must be in general accordance with the landscaping plans and set out details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) ecological areas;
- (f) details of any existing trees to be retained
- (g) details of the maintenance regime for the landscaping scheme; and
- (h) implementation timetables for all landscaping works.

(3) All landscaping works must be carried out and maintained to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

### **Surface water drainage**

6.—(1) No part of the authorised development which comprises any part of a surface water drainage system must commence until written details of that surface water drainage system have been submitted to the county planning authority by the undertaker following consultation with the local planning authority and the surface water drainage system has been approved in writing by the county planning authority.

(2) The surface water drainage system submitted for approval by the county planning authority under sub-paragraph (1) must be in accordance with the drainage strategy.

(3) The surface water drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1).

### **Highways lighting**

7.—(1) No part of the authorised development may commence until a written scheme of the proposed highway lighting to be provided for that part of the authorised development has been submitted to the county planning authority by the undertaker following consultation with the local planning authority and the written scheme of the proposed highway lighting for that part of the authorised development has been approved in writing by the county planning authority.

(2) The written scheme of proposed highway lighting submitted for approval by the county planning authority under sub-paragraph (1) must be in accordance with the highway lighting plan.

(3) The authorised development must be carried out in accordance with the scheme approved under sub-paragraph (1).

(4) Nothing in this requirement restricts lighting of the authorised development during its construction or where temporarily required for maintenance.

### **Contaminated land and groundwater**

8.—(1) The undertaker must carry out further ground investigation surveys—

- (a) as near as reasonably practicable to boreholes BH06 and BH101 referred to in the ground investigation report, prior to the commencement of the construction of Work No. 1E; and
- (b) of land within the limits of deviation of Work No. 5, prior to the commencement of the construction of Work No. 5.

(2) In the event that contaminated land, including groundwater—

- (a) which was not previously identified in the environmental statement is found at any time when carrying out the authorised development; or

- (b) is encountered following the further ground investigation of boreholes BH06 and BH101 referred to in the ground investigation report carried out under sub-paragraph (1)(a); or
- (c) is encountered whilst following the further ground investigation within the limits of deviation of Work No. 5 carried out under sub-paragraph (1)(b),

it must be reported as soon as reasonably practicable to the county planning authority, the local planning authority and the Environment Agency.

(3) As soon as reasonably practicable (and in any event not later than 30 days) following the submission of a report pursuant to sub-paragraph (1), the undertaker must submit for approval a scheme to the county planning authority setting out how the nature and extent of contamination on site will be assessed by way of an investigation and risk assessment.

(4) The undertaker must implement the approved scheme and upon completion of it submit for approval to the county planning authority a written report of the findings of the scheme.

(5) If the county planning authority determines, following receipt of the report submitted by the undertaker pursuant to sub-paragraph (4), that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose, must be submitted for approval by the county planning authority.

(6) Remediation must be carried out in accordance with the scheme approved under sub-paragraph (5).

(7) Following completion of the remediation carried out pursuant to sub-paragraph (5), a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to the county planning authority for approval.

(8) In this paragraph, where approval or determination is sought from the county planning authority by the undertaker, the county planning authority must consult with the local planning authority and the Environment Agency before giving any approval or determination.

### **Mooring**

9. The new bridge must not be opened for traffic until Work No.7 has been made available for use by recreational vessels.

### **Written schemes of investigation**

10.—(1) The authorised development must be carried out in accordance with the scheme-wide written scheme of investigation.

### **Navigation risk assessment**

11.—(1) Prior to commencement of construction of the new bridge and following consultation with the harbour authority, the undertaker must undertake a vessel simulation which takes account of the final design of the new bridge.

(2) Prior to commencement of construction of the new bridge and following consultation with the harbour authority and the Navigation Working Group, the undertaker must update the preliminary navigation risk assessment to take account of the final design and construction methodology of the new bridge and, in doing so, must use the results of the vessel simulation carried out under sub-paragraph (1).

(3) Following the update carried out pursuant to sub-paragraph (2), the Applicant must submit the updated navigation risk assessment to the harbour authority for its approval, which must not be unreasonably withheld.

(4) Following construction of the new bridge the undertaker must ensure that the updated navigation risk assessment produced pursuant to sub-paragraph (2) is kept under review and further updated as the undertaker considers circumstances require, consulting the harbour authority and the Navigation Working Group in any case where material changes are proposed to be made by the undertaker.



(5) Any navigation risk assessment updated by the undertaker pursuant to sub-paragraph (4) must be submitted to the harbour authority for its approval, which must not be unreasonably withheld.

(6) The construction and operation of the new bridge must be carried out in accordance with the recommendations of the updated navigation risk assessment produced pursuant to sub-paragraph (2) or any further updated navigation risk assessment produced pursuant to sub-paragraph (4).

### **Traffic mitigation**

**12.**—(1) The authorised development must not be opened for traffic until the undertaker has carried out and completed the following works:

- (a) the installation of equipment to adapt traffic signals at the junction of the existing A12 Tom Crisp Way and the existing Blackheath Road;
- (b) the widening of the existing Peto Way approach to the existing A1117 Normanston Drive/Peto Way roundabout; and
- (c) the widening of the left turn kerb radius at the existing Kimberley Road for traffic turning left into that road from the existing B1531 Waveney Drive, at the existing Kimberly Road/B1531 Waveney Drive junction.

(2) The works required by sub-paragraph (1) must not commence until written details of the works have been submitted to and approved by the local highway authority, following consultation with the local planning authority.

(3) The undertaker must not utilise the power under article 51 and Schedule 12 to make provision for the prohibition of motorised vehicles on the existing Durban Road except for emergency vehicles and the motorised vehicles of owners, occupiers and visitors to No 1b Durban Road, as shown on sheet 1 of the traffic regulation measures plans (clearways and prohibitions), until it has exercised the powers under article 51 and Schedule 11 to make provision for no waiting at any time and no loading or unloading at any time as shown on sheet 3 of the traffic regulation measures plans (clearways and prohibitions).

(4) The undertaker must, in 2037, undertake a review of the performance of the junctions described as junctions 6, 18 and 22 in the transport assessment.

(5) Following completion of the review required by sub-paragraph (4), the undertaker must submit for approval a report of that review to the county planning authority.

(6) Upon receipt of that report, the county planning authority must determine—

- (a) if any remedial measures are required at any of the junctions listed in sub-paragraph (4) having regard to the expected performance of these junctions in 2037 set out in the transport assessment; and
- (b) whether such remedial measures must be carried out by the undertaker.

(7) If the county planning authority determines that the undertaker must implement those remedial measures, the undertaker must implement them.

### **Piling works risk assessment**

**13.**—(1) No piling work to be carried out as part of the authorised development may be undertaken until the undertaker has submitted an update to the piling works risk assessment for approval to the Environment Agency.

(2) Any piling work to be carried out as part of the authorised development must be undertaken in accordance with the recommendations of the updated piling works risk assessment approved under subparagraph (1).

### **New bridge operating signals**

**14.**—(1) The operating signals of the new bridge must be operated in accordance with the new bridge operating signals assessment or any update to that assessment as may be submitted to and approved by the county planning authority.

### **Amendment to approved details**

15. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved in writing by the body responsible for approving the details for that requirement, following consultation by the undertaker with the Environment Agency and the local planning authority (where required to do so by the requirement) and the undertaker demonstrating to the body responsible that the amended details would not give rise to any materially new or materially different environmental effects than those assessed in the environmental statement.

## **PART 2**

### **PROCEDURE FOR DISCHARGE OF REQUIREMENTS**

#### **Interpretation**

16.—(1) In this Part of this Schedule, “discharging authority” means—

- (a) any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement; or
- (b) the local planning authority in the exercise of its functions set out in sections 60 and 61 of the Control of Pollution Act 1974(a).

#### **Applications made under requirements**

17.—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order the discharging authority must give notice to the undertaker of the discharging authority’s decision on the application with a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the discharging authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 18; or
- (c) such longer period as may be agreed between the parties.

(2) Subject to paragraph (3), in the event that the discharging authority does not determine an application within the period set out in sub-paragraph (1), the discharging authority is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the discharging authority may—

- (a) give or refuse its consent, agreement or approval; or
- (b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the discharging authority must provide its reasons for that decision with the notice of the decision.

#### **Further information regarding requirements**

18.—(1) In relation to any part of an application made under this Schedule, the discharging authority has the right to request such further information from the undertaker as is necessary to enable the discharging authority to consider the application.

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(a) 1974 c.40.

(2) If the discharging authority considers that further information is necessary and the requirement concerned contained in Part 1 of this Schedule does not specify that consultation with a consultee is required, the discharging authority must, within 10 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement concerned contained in Part 1 of this Schedule specifies that consultation with a consultee is required, the discharging authority must issue the application to the consultee within five business days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the discharging authority does not give the notification within the period specified in subparagraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

## Appeals

19.—(1) Where the undertaker makes an application to the discharging authority, the undertaker may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required by—
  - (i) a document referred to in Part 1 of this Schedule; or
  - (ii) a document referred to in any requirement contained in Part 1 of this Schedule;
- (b) the discharging authority grants an application subject to conditions;
- (c) the discharging authority issues a notice further to sections 60 or 61 of the Control of Pollution Act 1974;
- (d) on receipt of a request for further information pursuant to paragraph 18 of this Part of this Schedule, the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (e) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 17(1), giving rise to the appeal referred to in sub-paragraph (1);
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority and any consultee specified under the relevant requirement contained in Part 1 of this Schedule;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the adjudicator”) and must notify the appeal parties of the identity of the adjudicator and the address to which all correspondence for the attention of the adjudicator must be sent;
- (d) the discharging authority and any consultee (if applicable) must submit their written representations together with any other representations to the adjudicator in respect of the appeal within 10 business days of the start date specified by the adjudicator and must ensure that copies of their written representations and any other representations as sent to the adjudicator are sent to each other and to the undertaker on the day on which they are submitted to the adjudicator;
- (e) the appeal parties must make any counter-submissions to the adjudicator within 10 business days of receipt of written representations pursuant to sub-paragraph (c) above; and

- (f) the adjudicator must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the 10 day period for counter-submissions under paragraph (e).

(3) The appointment of the adjudicator pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the adjudicator considers that further information is necessary to enable the adjudicator to consider the appeal the adjudicator must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the adjudicator and to the other appeal parties by the date specified by the adjudicator. The adjudicator must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the adjudicator within 10 business days of the date specified by the adjudicator but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c)-(e).

(6) On an appeal under this paragraph, the adjudicator may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the adjudicator in the first instance.

(7) The adjudicator may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the adjudicator such written representations as have been sent outside of the relevant time limits.

(8) The adjudicator may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the adjudicator that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the adjudicator on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for a judicial review.

(10) If an approval is given by the adjudicator pursuant to this Part of this Schedule, it is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the adjudicator in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the adjudicator's determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the adjudicator to be paid by the discharging authority, the reasonable costs of the adjudicator are to be met by the undertaker.

(12) On application by the discharging authority or the undertaker, the adjudicator may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the adjudicator must have regard to relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may replace it.

### **Publication of requirements**

**20.—(1)** The undertaker, must, as soon as reasonably practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the county planning authority.

(2) The register must set out in relation to each requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

### **Anticipatory steps towards compliance with any requirement**

21. If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

## SCHEDULE 3

Article 9

### CLASSIFICATION OF ROADS, ETC

#### PART 1

#### A12 AND A146

In the administrative area of East Suffolk Council—

##### **A12 Waveney Drive**

1. A length of existing highway proposed to be improved and to be re-classified as part of the A12, along both the northbound and southbound carriageways, commencing from the roundabout junction of Tom Crisp Way (A12) and Horn Hill (A12) in a westerly direction to a point where it joins the existing crossroad junction with Durban Road and Riverside Road,

identified by a yellow line on the classification of roads plan.

##### **A12 Lake Lothing Third Crossing Southern Roundabout**

2. A length of new and existing highway proposed to be constructed and improved and to be classified as part of the A12 and to be known as the Lake Lothing Third Crossing Southern Roundabout, over the entire length of the circulatory carriageway that will form the improved junction of Waveney Drive (B1531) and Riverside Road (also to be re-classified as part of the A12),

identified by a yellow line on the classification of roads plan.

##### **A12 Riverside Road**

3. A length of existing highway proposed to be improved and to be classified as part of the A12, along both the northbound and southbound carriageways, commencing at the junction of Waveney Drive (B1531) and Durban Road (unclassified) and extending in a generally northerly direction for a distance of 200 metres,

identified by a cyan line on the classification of roads plan.

##### **A12 Lake Lothing Third Crossing**

4. A length of new highway proposed to be constructed and to be classified as part of the A12, along both the northbound and southbound carriageways, commencing from the existing Riverside Road at a point 200 metres north of its existing junction with Waveney Drive (B1531) and Durban Road (unclassified), and extending for a distance of 405 metres in a generally northerly direction across Lake Lothing and then continuing in a north-westerly direction, crossing the existing railway (East Suffolk Line) onwards to a point where it joins a proposed new roundabout junction (to be known as “the Lake Lothing Third Crossing Northern Roundabout”),

identified by a dashed purple line on the classification of roads plan.

##### **A12 Lake Lothing Third Crossing Northern Roundabout**

5. A length of new highway proposed to be constructed and to be classified as part of the A12 and to be known as the Lake Lothing Third Crossing Northern Roundabout, over the entire length of the circulatory carriageway located 75 metres to the south-west of the existing roundabout junction of Rotterdam Road and Denmark Road,

identified by a dashed purple line on the classification of roads plan.

#### **A12 Lake Lothing Third Crossing Northern Roundabout western arm (to/from Peto Way)**

6. A length of new highway, proposed to be constructed and to be classified as part of the A12 (Peto Way), along both the northbound and southbound carriageways, commencing from the proposed Lake Lothing Third Crossing Northern Roundabout and extending for a distance of 70 metres in a north-westerly direction to a point where it joins the existing Peto Way (C970) (which is to be reclassified as the A12) located 145 metres to the east of the existing roundabout junction of Peto Way and Barnards Way,

identified by a dashed purple line on the classification of roads plan.

#### **A12 Roundabout (existing junction of Peto Way (C970), Barnards Way and North Quay Retail Park)**

7. A length of existing highway proposed to be classified as part of the A12, over the entire length of the circulatory carriageway forming the existing roundabout junction of Peto Way (C970), Barnards Way and North Quay Retail Park,

identified by a solid purple line on the classification of roads plan.

#### **A12 Peto Way**

8. A length of existing highway to be improved and to be re-classified as part of the A12, commencing from its junction with the western arm of the Lake Lothing Third Crossing Northern Roundabout and extending in a generally north-westerly direction to a point where it joins the existing roundabout junction of Peto Way (C970), Barnards Way and North Quay Retail Park,

identified by a solid purple line on the classification of roads plan.

#### **A12 Roundabout (existing junction of Peto Way (C970), Barnards Way and North Quay Retail Park)**

9. A length of existing highway proposed to be classified as part of the A12, over the entire length of the circulatory carriageway forming the existing roundabout junction of Peto Way (C970), Barnards Way and North Quay Retail Park,

identified by a solid purple line on the classification of roads plan.

#### **A12 Peto Way**

10. A length of existing highway proposed to be classified as part of the A12, along both the northbound and southbound carriageways, commencing from the roundabout forming the junction of Peto Way (C970), Barnards Way and North Quay Retail Park extending in a north westerly direction to the point where it joins the existing roundabout junction of Peto Way (C970) and Peto Way (A1117) with Normanston Drive (A1117) and Normanston Drive (A1144) and Fir Lane,

identified by a solid purple line on the classification of roads plan.

#### **A12 Roundabout (existing junction of Peto Way (C970) and Peto Way (A1117) with Normanston Drive (A1117) and Normanston Drive (A1144))**

11. A length of existing highway proposed to be classified as part of the A12, over the entire length of the circulatory carriageway forming the existing roundabout junction of Peto Way (C970) and Peto Way (A1117) with Normanston Drive (A1117) and Normanston Drive (A1144),

identified by a red line on the classification of roads plan.

### **A12 Peto Way**

12. A length of existing highway proposed to be classified as part of the A12, along both the northbound and southbound carriageways, commencing from the roundabout forming the junction of Peto Way (C970) and Peto Way (A1117) with Normanston Drive (A1144) and Normanston Drive (A1117) and Fir Lane, extending in a northerly direction to the point where it joins the existing roundabout junction of Millennium Way (A1117) and Oulton Road,

identified by a red line on the classification of roads plan.

### **A12 Roundabout (existing junction of Oulton Road, Millennium Way and Peto Way)**

13. A length of existing highway proposed to be classified as part of the A12, over the entire length of the circulatory carriageway forming the existing roundabout junction of Oulton Road (B1074), Millennium Way (A1117) and Peto Way (A1117).

identified by a red line on the classification of roads plan.

### **A12 Millennium Way**

14. A length of existing highway to be re-classified as part of the A12, along both the northbound and southbound carriageways, commencing from the existing roundabout junction of Millennium Way (A1117) and Oulton Road (B1074), extending in a northerly direction to the point where it joins the existing roundabout junction of Park Meadows and Bentley Drive,

identified by a red line on the classification of roads plan.

### **A12 Roundabout (existing junction of Millennium Way, Bentley Drive and Park Meadows)**

15. A length of existing highway proposed to be classified as part of the A12, over the entire length of the circulatory carriageway forming the existing roundabout junction of Millennium Way (A1117), Bentley Drive and Park Meadows,

identified by a red line on the classification of roads plan.

### **A12 Millennium Way**

16. A length of existing highway to be re-classified as part of the A12, along both the northbound and southbound carriageways, commencing from the existing roundabout junction of Millennium Way (A1117), Park Meadows and Bentley Drive, extending in a northerly direction to the point where it joins the existing roundabout junction of Yarmouth Road (A47), Corton Long Lane (B1385) and Blundeston Road,

identified by a red line on the classification of roads plan.

### **A146 Bridge Road**

17. A length of existing highway along both the northbound and southbound carriageways proposed to be re-classified as part of the A146, commencing from the northern end of the A146 Beccles Road (a point 135m from the junction with Cotmer Road in a northerly direction where the road crosses the rail line) and continuing in a general northerly direction up to the existing roundabout junction of Bridge Road, Saltwater Way (A1117) and Victoria Road (B1531),

identified by a blue line on the classification of roads plan.



**A146 Roundabout (existing junction of Saltwater Way (A1117), Bridge Road (A1117) and Victoria Road (B1531))**

18. A length of existing highway proposed to be re-classified as part of the A146, over the entire length of the circulatory carriageway forming the roundabout junction of Saltwater Way (A1117), Bridge Road (A1117) and Victoria Road (B1531),

identified by a blue line on the classification of roads plan.

**A146 Saltwater Way**

19. A length of existing highway along both the northbound and southbound carriageways proposed to be re-classified as part of the A146, commencing from the existing roundabout junction of Bridge Road (A1117) and Victoria Road (B1531) with Saltwater Way (A1117) and continuing in a generally northerly direction to a point where it joins the exit arm of the un-classified section of Bridge Road,

identified by a blue line on the classification of roads plan.

**A146 Bridge Road**

20. A length of existing highway along both the northbound and southbound carriageways proposed to be re-classified as part of the A146, commencing from where Saltwater Way (A1117) joins the exit arm from the existing unclassified section of Bridge Road and extending in a generally northerly direction until it joins the roundabout junction of Commodore Road (unclassified) and Bridge Road (A1117),

identified by a blue line on the classification of roads plan.

**A146 Roundabout (existing junction of Bridge Road (A1117) and Commodore Road)**

21. A length of existing highway proposed to be reclassified as part of the A146, over the entire length of the circulatory carriageway, forming the roundabout junction of Bridge Road (A1117) with Commodore Road,

identified by a blue line on the classification of roads plan.

**A146 Bridge Road**

22. A length of existing highway along both the northbound and southbound carriageways proposed to be re-classified as part of the A146, commencing from the roundabout junction of Bridge Road (A1117) and Commodore Road in a north-easterly direction to a point where it joins the roundabout junction of Bridge Road (A1117), Gorleston Road (B1375) and Normanston Drive (A1117),

identified by a blue line on the classification of roads plan.

**A146 Roundabout (existing junction of Bridge Road (A1117), Gorleston Road (B1375) and Normanston Drive (A1117))**

23. A length of existing highway proposed to be re-classified as part of the A146, over the entire length of the circulatory carriageway forming the roundabout junction of Gorleston Road (B1375), Normanston Drive (A1117) and Bridge Road (A1117),

identified by a blue line on the classification of roads plan.

**A146 Normanston Drive**

24. A length of existing highway along both the northbound and southbound carriageways proposed to be re-classified as part of the A146, commencing from the roundabout junction of

Gorleston Road (B1375), Normanston Drive (A1117) and Bridge Road (A1117) in a generally north-easterly direction to a point where it joins the existing roundabout junction of Peto Way (A1117), Normanston Drive (A1117), Peto Way (C970), Normanston Drive (A1144) and Fir Lane (unclassified),

identified by a blue line on the classification of roads plan.

## PART 2 OTHER ROADS

### **C970 Lake Lothing Third Crossing Northern Roundabout northern arm (to/from Denmark Road)**

25. A length of new highway proposed to be constructed and to be classified as part of Denmark Road (C970), along both the north-eastbound and south-westbound carriageways, commencing at the proposed Lake Lothing Third Crossing Northern Roundabout and extending in a north-easterly direction for a distance of 25 metres to a point where it joins the existing roundabout junction of Rotterdam Road, Denmark Road and Peto Way (C970),

identified by a dashed green line on the classification of roads plan.

### **Canning Road**

26. A length of new highway proposed to be constructed and to be unclassified and known as Canning Road, along both the northbound and southbound carriageways, commencing from the roundabout junction with Canning Road and entrance to East Suffolk Council offices in a northerly direction until its junction with the existing Riverside Road,

identified by a dashed orange line on the classification of roads plan.

### **New Access Road**

27. A length of new highway proposed to be constructed and to be unclassified from a point on Waveney Drive 95 metres east of its junction with Waveney Crescent west, in a generally northerly direction for a distance of 236 metres and then in a generally easterly direction towards Riverside Road, for a distance of 158 metres to a point where it joins the western end of the existing Riverside Road,

identified by a dashed orange line on the classification of roads plan.

SCHEDULE 4

Article 10

PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS AND PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

PART 1

HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New highway to be substituted/provided</i>
<i>The rights of way and access plans – sheet 1</i>			
In the administrative area of East Suffolk Council	-	-	Reference A A length of new highway from a point on Peto Way 25 metres west of its junction with Rotterdam Road in a generally south westerly direction for a distance of 25 metres.
<i>The rights of way and access plans – sheets 1 and 2</i>			
In the administrative area of East Suffolk Council	-	-	Reference B A length of new highway from a point on Peto Way 140 metres west of its junction with Rotterdam Road in a generally southerly direction for a distance of 432 metres.
<i>The rights of way and access plans – sheet 2</i>			
In the administrative area of East Suffolk Council	-	-	Reference C A length of new highway from a point on Waveney Drive 95 metres east of its junction with Waveney Crescent west, in a generally northerly direction for a distance of 236 metres and then in a generally easterly direction towards Riverside Road, for a

			distance of 117 metres.
	-	-	Reference D A length of new highway from a point on Riverside Road 37 metres east of its junction with the entrance to Riverside, in a generally southerly direction to Canning Road, for a distance of 90 metres.
	-	-	Reference E A length of new highway from a point on Riverside Road 62 metres east of the entrance to Riverside in a generally northerly direction for a distance of 40 metres, with one spur extending 32m east at a point 9 metres north of Riverside Road, and a turning head extending east at its northern extent.

## PART 2

### HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
<i>The rights of way and access plans – sheet 1</i>		
None	None	-
<i>The rights of way and access plans – sheet 2</i>		
None	None	-

## PART 3

### PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New private means of access to be substituted/provided</i>
<i>The rights of way and access plans – sheet 1</i>			
In the administrative area of East Suffolk Council	-	-	Reference 1 A new private means of access from the Network Rail works compound area in the south to land occupied by the East Suffolk railway line in the north, to facilitate access for maintenance of the new bridge.
	-	-	Reference 1a A new private means of access from the improved Denmark Road, located 90m south east of the existing Rotterdam Road roundabout, allowing access across the proposed landscaped area to land occupied by the East Suffolk Railway.
	-	-	Reference 1b A new private means of access from the landscaped area, located 50m south of private means of access Reference 1a, allowing access to land occupied by the East Suffolk Railway.
	-	-	Reference 2 A new private means of access from the Associated British Ports' quayside in the

			south to the Network Rail works compound area in the north, to facilitate access for maintenance of the new bridge.
<i>The rights of way and access plans – sheet 2</i>			
In the administrative area of East Suffolk Council	Reference b Access to land (owned by East Suffolk Council) on the north side of the existing Riverside Road, 5 metres east of its junction with the existing access to premises known as Riverside (occupied by East Suffolk Council and Suffolk County Council).	A length from its junction with the existing Riverside Road northwards, for a distance of 3 metres.	Reference 3 To be substituted by a new private means of access from the new highway (Reference C) and located 27 metres west of the existing access to Riverside, to be granted for the benefit of the land affected by the stopping up of private means of access reference b.
	-	-	Reference 4 A new private means of access from the new highway (Reference E) commencing 72 metres east and 43 metres north of the existing entrance to Riverside, providing access to the new bridge control tower.
	-	-	Reference 4a A new private means of access from the new highway (Reference E), located 34 metres to the north of the existing access from Riverside Road, providing access to premises to the north-east of Riverside Road occupied by Nexen.
	Reference d	A length from its junction with the existing Riverside	Reference 4 To be substituted by a new private means of

	Access to premises (occupied by UK Power Networks Ltd).	Road in a northerly direction for a distance of 3 metres.	access from the improved Riverside Road to premises (occupied by UK Power Networks Ltd) located 62 metres east of the existing entrance to Riverside, providing access to a relocated substation, to be granted for the benefit of the land affected by the stopping up of private means of access reference d.
	Reference e Access to premises (occupied by Mobile Broadband Network Limited) on the west side of the existing Riverside Road, 5 metres west of its junction with the existing access to Riverside.	A length from its junction with the existing Riverside Road westwards, for a distance of 58 metres.	Reference 5 To be substituted by a new private means of access from the new highway (Reference C) located 57 metres west of the existing entrance to Riverside, to be granted for the benefit of the land affected by the stopping up of private means of access reference e.
	Reference g Access to premises (occupied by East Suffolk Council) on the south side of the existing Riverside Road, 47 metres east of its junction with the existing access to Riverside.	A length from its junction with the existing Riverside Road southwards, for a distance of 3 metres.	Reference 6 To be substituted by a new private means of access from the new highway (Reference D) located 26 metres south of the existing Riverside Road, to be granted for the benefit of the land affected by the stopping up of private means of access reference g.
	-	-	Reference 7 A new private means of access from the improved Riverside Road 25 metres north of Canning Road, to facilitate access for maintenance of the new bridge southern approach and adjacent utilities.

	-	-	<p>Reference 8</p> <p>A new private means of access from the north side of the proposed turning head at the end of the improved Canning Road to the west of its existing junction with Riverside Road, to facilitate access for maintenance of the new bridge southern approach and adjacent utilities.</p>
	-	-	<p>Reference 9</p> <p>A new private means of access from the south side of the improved Canning Road to the west of its existing junction with Riverside Road to facilitate access for maintenance of the new bridge southern approach and adjacent utilities.</p>
	-	-	<p>Reference 10</p> <p>A new private means of access from the north side of the existing MotorLings access road on the east of its junction with Riverside Road, to facilitate access for maintenance of the new bridge southern approach and adjacent utilities.</p>
	-	-	<p>Reference 11</p> <p>A new private means of access from the south side of the existing MotorLings access road on the east of its junction with Riverside Road, to facilitate access for maintenance of the new bridge southern</p>



			approach and adjacent utilities.
	Reference h Access to premises known as Riverside (occupied by East Suffolk Council and Suffolk County Council) on the west side of the existing Canning Road, 82 metres west of its junction with the existing Riverside Road.	A length from its junction with the existing Canning Road north-westwards, for a distance of 10 metres.	Reference 12 To be substituted by a new private means of access from the improved Canning Road, to be granted for the benefit of the land affected by the stopping up of private means of access reference h.
	-	-	Reference 13 A new private means of access located on the west side of the improved Riverside Road, on land 60 metres to the south of the improved Canning Road and enabling access to land occupied by the Riverside Business Centre, to facilitate maintenance of the new bridge southern approach and adjacent utilities.
	-	-	Reference 14 A new private means of access from the improved Waveney Drive, located 45 metres west of the existing Tom Crisp Way roundabout, to facilitate access for maintenance of the new bridge southern approach and adjacent utilities.
	Reference i Access to premises at Lings Wharf, (occupied by Motorlings and others) on the east side of the existing Riverside Road, 139	A length from its junction with the existing Riverside Road eastwards, for a distance of 8 metres.	Reference 15 To be substituted by a new private means of access from the improved Waveney drive located 45 metres to the west of the Tom Crisp Way

	metres north of its junction with the existing Waveney Drive.		roundabout, providing access to premises on the north side of Waveney Drive, occupied by MotorLings, to be granted for the benefit of the land affected by the stopping up of private means of access reference i.
	Reference j Access to premises at Lings Wharf, (occupied by Motorlings and others) on the east side of the existing Riverside Road, 68 metres north of its junction with the existing Waveney Drive.	A length from its junction with the existing Riverside Road eastwards, for a distance of 6 metres.	Reference 15 To be substituted by a new private means of access from the improved Waveney drive located 45 metres to the west of the Tom Crisp Way roundabout, providing access to premises on the north side of Waveney Drive, occupied by MotorLings, to be granted for the benefit of the land affected by the stopping up of private means of access reference j.
	-	-	Reference 16 A new private means of access from the eastern side of the land owned and occupied by MotorLings, to land directly north of the Tom Crisp Way roundabout, to enable egress from the MotorLings site to the roundabout.
	-	-	Reference 17 A new private means of access to premises known as No.1b Durban Road from Durban Road at a point 25 metres south of the existing junction of Waveney Drive with Durban Road for a distance of

			8 metres, to be granted for the benefit of No.1b Durban Road.
	Reference n Access to the existing garages on the south side of Durban Road 19 metres south of the junction of Durban Road with Waveney Drive.	A length from its junction with the existing Durban Road in a south-easterly direction for a distance of 5 metres.	Reference 18 To be substituted by a new private means of access providing pedestrian access from the new bridge southern roundabout, to be granted for the benefit of the land affected by the stopping up of private means of access reference n.
	Reference o Access to the premises known as Bellablue Beauty Clinic.	A length from its junction with the existing Waveney Drive in a southerly direction for a distance of 9 metres.	Reference 19 To be substituted by a new private means of access providing pedestrian access from the new bridge southern roundabout, to be granted for the benefit of the land affected by the stopping up of private means of access reference o.
	Reference p Access to No. 34 Waveney Drive.	A length from its junction with the existing Waveney Drive in a southerly direction for a distance of 2 metres.	Reference 20 To be substituted by a new private means of access providing pedestrian access from the westerly approach to the new bridge southern roundabout, to be granted for the benefit of the land affected by the stopping up of private means of access reference p.
	Reference q Access to No. 32 Waveney Drive.	A length from its junction with the existing Waveney Drive in a southerly direction for a distance of 2 metres.	Reference 21 To be substituted by a new private means of access providing pedestrian access from the westerly approach to the new bridge southern roundabout, to be granted for the

			benefit of the land affected by the stopping up of private means of access reference q.
	Reference r Access to Lings Wharf, (occupied by Motorlings and others) 29 metres west of the Tom Crisp Way Roundabout.	A length from its junction with the existing Waveney Drive in a northerly direction for a distance of 2 metres.	Reference 15 To be substituted by a new private means of access from the improved Waveney drive located 45 metres to the west of the Tom Crisp Way roundabout, providing access to premises on the north side of Waveney Drive, occupied by MotorLings, to be granted for the benefit of the land affected by the stopping up of private means of access reference r.

#### PART 4

#### PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private Means of Access to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
<i>The rights of way and access plans – sheet 1</i>		
In the administrative area of East Suffolk Council.	Reference a Access to land (owned by Suffolk County Council)	A length from its junction with the existing junction of Peto Way/Denmark Road with Rotterdam Road in a southerly direction for a distance of 8 metres.
<i>The rights of way and access plans – sheet 2</i>		
In the administrative area of East Suffolk Council.	Reference c Access to land (occupied by East Suffolk Council) on the north side of Riverside Road 27 metres east of the access to Riverside.	A length from its junction with the existing Riverside Road in a westerly direction for a distance of 3 metres.
	Reference f Access to land (occupied by East Suffolk Council) on the west side of Riverside Road 5 metres west of the access to Riverside.	A length from its junction with the existing Riverside Road in a westerly direction for a distance of 2 metres.

	<p>Reference k Access to No. 42 Waveney Drive on the south side of Waveney Drive 42 metres west of the junction of Waveney Drive with Riverside Road.</p>	<p>A length from its junction with the existing Durban Road in a north-westerly direction for a distance of 3 metres.</p>
	<p>Reference l Access to No. 42 Waveney Drive on the north side of Durban Road 44 metres south-west of the junction of Waveney Drive with Durban Road.</p>	<p>A length from its junction with the existing Riverside Road in a westerly direction for a distance of 3 metres.</p>
	<p>Reference m Access to No. 42 Waveney Drive on the north side of Durban Road 54 metres south-west of the junction of Waveney Drive with Durban Road.</p>	<p>A length from its junction with the existing Durban Road in a westerly direction for a distance of 3 metres.</p>

## SCHEDULE 5

Article 19

### TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>Type of tree (1)</i>	<i>Work number in which trees are situated</i>
Trees within the areas identified as T4 and G1 in the First Schedule to the Waveney District Council Tree Preservation Order (No. 61) dated 4 January 1985 and being trees located on land at 42 Waveney Drive, Lowestoft, and shown on the tree preservation order trees location plan.	Work No. 2
Tree within the area marked T1 in the First Schedule to the Waveney District Council Tree Preservation Order 1999 (No. 269) dated 20 January 1999 and being a single tree located on land north of No.1a Durban Road, Lowestoft and shown on the tree preservation order trees location plan.	Work No. 2

SCHEDULE 6

Article 25

PART 1

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Plot Reference Number(s)</i> <i>shown on land plans</i>	<i>(3)</i> <i>Purpose(s) for which rights</i> <i>over land may be acquired</i>
<i>The land plans – sheet 1</i>		
<i>None</i>	-	-
<i>The land plans – sheet 2</i>		
In the administrative area of East Suffolk Council	2-14, 2-17, 2-21, 2-27, 2-30	New rights (including the imposition of restrictive covenants) for the benefit of the undertaker for the purpose of constructing, protecting, accessing and maintaining the new bridge.
	2-34	New rights (including the imposition of restrictive covenants) for the benefit of the undertaker for the purpose of constructing, protecting, accessing and maintaining the new bridge, including a right of access along Commercial Road (from the point where it ceases to be public highway to the location of the new bridge), as shown on sheet 1 of the rights of way and access plans.
<i>The land plans – sheet 3</i>		
In the administrative area of East Suffolk Council	3-03, 3-06, 3-08, 3-11, 3-36, 3-55	New rights (including the imposition of restrictive covenants) for the benefit of the undertaker for the purpose of constructing, protecting, accessing and maintaining the new bridge.
	3-12, 3-39	New rights (including the imposition of restrictive covenants) for the benefit of the undertaker for the purpose of constructing, protecting, accessing and maintaining the new bridge.
	3-29, 3-32, 3-50	New rights (including the imposition of restrictive covenants) required for the benefit of the undertaker for the purpose of constructing, protecting, accessing and

		maintaining the new bridge; and, for the benefit of the undertaker and relevant statutory undertakers, for the provision of private means of access to land as shown on sheet 2 of the rights of way and access plans, and in connection with the diversion, protection and maintenance of, and access to, statutory undertakers' apparatus.
	3-41	New rights (including the imposition of restrictive covenants) for the benefit of the undertaker for the purpose of providing and maintaining appropriate visibility across the new public highway.
	3-45, 3-47	New rights (including the imposition of restrictive covenants) required for the benefit of the undertaker for the purpose of constructing, protecting, accessing and maintaining the new bridge southern approach, and for the benefit of the undertaker and relevant statutory undertakers for the provision of private means of access as shown on sheet 2 of the rights of way and access plans, and in connection with the diversion, protection and maintenance of, and access to, statutory undertakers' apparatus.
<i>The land plans – sheet 4</i>		
In the administrative area of East Suffolk Council	4-05	New rights (including the imposition of restrictive covenants) for the benefit of the undertaker for the purpose of providing and maintaining appropriate visibility across the new public highway.
	4-07, 4-08, 4-09	New rights (including the imposition of restrictive covenants) required for the benefit of relevant statutory undertakers in connection with the diversion, protection and maintenance of, and access to statutory undertakers' apparatus.
<i>The land plans – sheet 5</i>		



In the administrative area of East Suffolk Council	5-03, 5-10, 5-31	New rights (including the imposition of restrictive covenants) required for the benefit of the undertaker for the purpose of constructing, protecting, accessing and maintaining the new bridge southern approach and for the benefit of relevant statutory undertakers in connection with the diversion, protection and maintenance of, and access to statutory undertakers' apparatus.
	5-14	New rights (including the imposition of restrictive covenants) for the benefit of relevant statutory undertakers in connection with the diversion, protection and maintenance of and access to statutory undertakers' apparatus and for the provision of a private means of access to land on the north side of Waveney Drive, as shown on sheet 2 of the rights of way and access plans, for the benefit of that land.
	5-15	New rights (including the imposition of restrictive covenants) for the purpose of providing a private means of access to land adjacent to the new bridge, as shown on sheet 2 of the rights of way and access plans, for the benefit of that land.
	5-27	New rights (including the imposition of restrictive covenants) required for the benefit of the undertaker for the purpose of constructing, protecting, accessing and maintaining the new bridge southern approach; for the provision of private means of access to land as shown on sheet 2 of the rights of way and access plans for the benefit of that land; and for the benefit of the relevant statutory undertaker in connection with the diversion, protection and maintenance of,

		and access to statutory undertakers' apparatus.
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**PART 2**  
**RIGHTS FOR THE BENEFIT OF CADENT**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Plot Reference Number(s)</i> <i>shown on land plans</i>	<i>(3)</i> <i>Purpose(s) for which rights</i> <i>over land may be acquired</i>
In the administrative area of East Suffolk Council	3-29, 3-32, 3-50	New rights (including the imposition of restrictive covenants) to divert, lay, construct, inspect, maintain, protect, use, replace, remove or render unusable, and to access as required for these purposes, a pipeline for the distribution or storage of gas or other ancillary materials (whether such gas or materials are transmitted by Cadent on its own behalf or on behalf of other persons).

## MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

### Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 7 to the Lake Lothing (Lowestoft) Third Crossing Order 201[\*] (“the 201[\*] Order”);
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 to the 201[\*] Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on and take possession of that land,

the authority is deemed for the purposes of subsection 3(a) to have entered onto that land where it entered on that land for the purpose of exercising that right.”

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3) of this Schedule—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

### Application of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 31 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 22 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or the imposition of a restrictive covenant under article 25 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows—

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

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(a) 1973 c.26.

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 22 (compulsory acquisition of land), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on a specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 31(4) is also modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
  - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
  - (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).
  - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
  - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).
  - (f) Section 20 was amended by paragraph 4 of Schedules 15 to the Planning and Compensation Act 1991 and S.I. the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).

**“SCHEDULE 2A**  
**COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT**  
**IN NOTICE TO TREAT**

**Introduction**

1. This Schedule applies where an acquiring authority (“the authority”) serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Lake Lothing (Lowestoft) Third Crossing Order 201[\*] in respect of the land to which the notice to treat relates.

2. But see article 26(4) (acquisition of subsoil or airspace only) of the Lake Lothing (Lowestoft) Third Crossing Order 201[\*] which excludes the acquisition of subsoil or airspace only from the application of this Schedule.

3. In this Schedule, “house” includes any park or garden belonging to a house.

**Counter-notice requiring purchase of land**

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

**Response to counter-notice**

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

**Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

**11.** In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 8

Article 26

LAND IN WHICH ONLY AIRSPACE AND NEW RIGHTS MAY BE ACQUIRED

<i>(1)</i> Area	<i>(2)</i> Plot Reference Number(s) shown on land plans	<i>(3)</i> Height above Ordnance Datum (m)	<i>(4)</i> Purpose(s) for which airspace and new rights may be acquired
<i>The land plans - sheet 1</i>			
None	-	-	-
<i>The land plans – sheet 2</i>			
In the administrative area of East Suffolk Council	2-26, 2-28	7.805 metres	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new bridge.
	2-29	8.315 metres	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new bridge.
	2-32	8.155 metres	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new bridge.
	2-33	8.230 metres	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new bridge.
<i>The land plans – sheet 3</i>			
In the administrative area of East Suffolk Council	3-33	8.230 metres	Airspace for the construction and operation of the new bridge and new rights (including restrictive

			covenants) below, for the protection and maintenance of the new bridge.
	3-34	13.480 metres	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new bridge.
	3-35, 3-37, 3-38	8.065 metres	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new bridge.
<i>The land plans – sheet 4</i>			
None	-	-	-
<i>The land plans – sheet 5</i>			
None	-	-	-



SCHEDULE 9

Article 32

LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Area	<i>(2)</i> Plot Reference Number(s) shown on land plans	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Relevant part of the authorised development
<i>The land plans – sheet 1</i>			
None	-	-	-
<i>The land plans – sheet 2</i>			
In the administrative area of East Suffolk Council	2-13, 2-15, 2-16, 2-19, 2-20, 2-22, 2-31	Temporary possession to provide working space for the construction of the new bridge and the new bridge approaches.	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge
<i>The land plans – sheet 4</i>			
In the administrative area of East Suffolk Council	3-01, 3-02	Temporary possession to provide working space for the construction of the new bridge.	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge
	3-10, 3-54	Temporary possession to provide working space for the construction of the new bridge and the new mooring.	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge
	3-14, 3-16	Temporary possession to provide working space for the construction of the new bridge and a construction compound to facilitate all works.	<i>The land plans – sheet 3</i>

	3-15	Temporary possession to provide working space for the construction of the new bridge and a construction compound to facilitate all works.	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge
	3-21	Temporary possession of land to construct a replacement access to premises and to facilitate construction of the new extension of Canning Road.	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge
	3-22, 3-25	Temporary possession of land to provide working space for the construction of the new extension to Canning Road.	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge
	3-42	Temporary possession of land to provide working space for the construction of the new extension to Canning Road and improvements to Riverside Road.	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge
	3-56	Temporary possession of land to facilitate phased reconfiguration of commercial premises located on land to the south of and outside the Order limits around plots 3-57 and 3-58.	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge
	3-57	Temporary possession of land to provide	Airspace for the construction and

		access to facilitate the phased reconfiguration of commercial premises located on land to the south of and outside the Order limits around plots 3-57 and 3-58.	operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge
	3-59	Temporary possession of land to provide working space for the construction of the new access road between Waveney Drive and the improved Riverside Road.	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge
<i>The land plans – sheet 4</i>			
In the administrative area of East Suffolk Council	4-01, 4-04	Temporary possession of land to provide working space for the construction of the new access road between Waveney Drive and the improved Riverside Road.	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge
<i>The land plans – sheet 5</i>			
In the administrative area of East Suffolk Council	5-06	Temporary possession of land to provide working space for the improvement of Riverside Road and Waveney Drive and the construction of the new southern roundabout.	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge
	5-28	Temporary possession of land to provide working space for the improvement of Riverside Road (to become the new bridge southern approach).	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge

	5-35, 5-36	Temporary possession of land to provide working space for the improvement of Durban Road and Waveney Drive and the construction of the new southern roundabout.	Airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the benefit of the undertaker, for the protection and maintenance of the new bridge
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## THE LOWESTOFT THIRD CROSSING BYELAWS 201[\*]

## PART 1

## PRELIMINARY

**Citation and commencement**

1. These byelaws may be cited as the Lowestoft Third Crossing Byelaws 201[\*] and were made under article 47 of the Lowestoft (Lake Lothing) Third Crossing Order 201[\*].

**Interpretation**

2.—(1) In these byelaws unless the context otherwise requires—

“appointed person” means—

- (a) a person acting in the course of that person’s duties who—
  - (i) is an employee, agent, contractor or sub-contractor of Suffolk County Council; or
  - (ii) is authorised by the undertaker to exercise one or more of its functions under this Order; or
- (b) a constable, Police Community Support Officer, an officer of the Driver and Vehicle Standards Agency, an officer of the Health and Safety Executive, a person authorised for the purposes of section 44 (powers of fire-fighters etc in an emergency etc) of the Fire and Rescue Services Act 2004(a) or a person accredited by or under section 41 (accreditation under community safety accreditation schemes) of the Police Reform Act 2002(b), acting in the execution of that person’s duties within the new bridge area;

“barriers” means the safety barriers installed within the new bridge area to prevent the passage of persons or vehicles;

“the byelaws” means these byelaws;

“cycleways” means the parts of the new bridge area allocated for the passage of bicycles and pedestrians only;

“existing bridge” means the opening bridge crossing Lake Lothing and known as the Lowestoft A47 Bascule Bridge;

“footways” means the parts of the new bridge area allocated for the passage of pedestrians only;

“Lake Lothing” means the navigable saltwater lake within the town of Lowestoft in the area of East Suffolk Council between the North Sea and Oulton Broad, as identified by reference points 652111E, 292801N, 655207E, 292615N;

“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads;

“the new bridge” means Work Nos. 1B, 1C, 1D and 1E as set out in Schedule 1 to the Order (and including without limitation the piers, bridge deck, carriageway and parapets);

“the new bridge area” means the new bridge, the new bridge approaches, the new bridge control building area, and the new bridge infrastructure, as shown on the new bridge area plans;

“the new bridge approaches” means the northern and southern approaches to the new bridge (respectively “the new bridge northern approach” and “the new bridge southern approach”), the locations of which are shown on the new bridge area plan;

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(a) 2004 c.21. Section 44 was amended by the Emergency Workers (Obstruction) Act 2006 (c.39).

(b) 2002 c.30. Section 41 was amended by the Police and Justice Act 2006 (c.48).

“the new bridge area plan” means the plan of that description as referenced in Schedule 14 (documents to be certified) and certified by the Secretary of State pursuant to Article 58 of the Order;

“new bridge control building” means the control tower building for the new bridge which forms part of Work No. 6 as set out in Schedule 1 to the Order;

“new bridge control building area” means the area outlined in green on sheet 2 of the new bridge area plans;

“the new bridge infrastructure” means the infrastructure elements supporting the new bridge including (without limitation) the cables, drainage, electricity and water supplies, and fenders relating to the new bridge, as well as any plant and machinery and any emergency, safety or communications equipment required for the construction, maintenance or operation of the new bridge;

“notice” includes a sign, signal and a digital or other display, and in appropriate circumstances, an audible announcement;

“open” unless the context does not relate to the new bridge means any point in time when the surface of the new bridge is raised to allow for the passing of vessels under the new bridge;

“the Order” means the Lake Lothing (Lowestoft) Third Crossing Order 201[\*];

“pontoon” means the mooring which forms Work No.7 as set out in Schedule 1 to the Order;

“trailer” means a vehicle (including a horse box) designed or adapted to be towed by a motor vehicle;

“vaporiser” means an electronic device that can be used to deliver nicotine or other substances to a person inhaling from the device;

“vessel” means every description of vessel with or without means of propulsion of any kind and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on or by water, a seaplane on or in the water and a hovercraft within the meaning of the Hovercraft Act 1968(a).

(2) The Interpretation Act 1978 applies to the interpretation of these byelaws as it applies to the interpretation of an Act of Parliament.

## PART 2

### CONDUCT AND BEHAVIOUR

#### **Smoking etc.**

3. Within the new bridge area a person must not—

- (a) smoke or carry an item that is alight including a lit cigar, cigarette, cigarillo, match, pipe or lighter; or
- (b) use a vaporiser.

#### **Unacceptable behaviour**

4. A person must not—

- (a) climb upon, remove, operate, interfere with, obstruct or damage (whether deliberately or negligently) the new bridge infrastructure;
- (b) enter the new bridge control building area without prior consent from an appointed person;
- (c) remove, jump or otherwise manoeuvre over or under, any bar, railing, fence or barrier or open any gate or movable barrier fitted or placed on any part of the new bridge without prior consent from an appointed person;

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(a) 1968 c.59.

- (d) drop or allow to fall anything on to the new bridge or the new bridge approaches or over the parapet of the new bridge or over any fence or wall on or abutting on the new bridge so as to endanger or cause injury or damage to any person or property;
- (e) post a bill, placard or notice within the new bridge area;
- (f) write, print, draw or paint on or cut, mark or stamp any part of the new bridge area;
- (g) fix anything to the new bridge or the new bridge infrastructure;
- (h) spit, urinate or defecate in the new bridge area;
- (i) place or deposit or leave on or in the new bridge area any vehicle or any article or thing so as to create an obstruction or litter or fire risk;
- (j) offer for sale or sell any article or thing of any description in the new bridge area without the consent of Suffolk County Council;
- (k) move, alter, deface or otherwise interfere with any notice belonging to Suffolk County Council which is exhibited or placed in the new bridge area;
- (l) without prejudice to any other requirement of the byelaws, act in any way as to cause a nuisance in the new bridge area; or
- (m) use abusive behaviour or threatening language or gestures in the new bridge area.

## PART 3

### ACCESS AND TRAFFIC

#### **Unauthorised access and loitering**

**5.—**(1) A person must not enter, attempt to enter or remain in any part of the new bridge area where there is a notice prohibiting or restricting access.

(2) A person must not loiter in the new bridge area if asked to leave by an appointed person.

(3) A driver of a motor vehicle must not sleep within the new bridge area.

(4) An appointed person may prevent the driver of a motor vehicle from gaining access to the new bridge area if the appointed person has reasonable cause to believe the driver of the motor vehicle is contravening, or will contravene if allowed to proceed, any of the byelaws.

(5) A person must not attempt to use or cross the new bridge—

- (a) when instructed not to do so by an appointed person;
- (b) in contravention of a notice displayed by the undertaker; or
- (c) whenever the new bridge is in the process of opening or closing.

#### **Traffic regulation**

**6.—**(1) A person (other than an appointed person) must not use or cause to be used within the new bridge area a barrow, cart, rickshaw or animal-drawn means of conveyance except if it is conveyed as the load or part of the load of a motor vehicle.

(2) A person (other than an appointed person) must not use or cause to be used within the new bridge area vehicles which emit grit, sparks, ashes, cinders, or oily substances in a manner which contravenes any regulations for the time being in force under the Road Traffic Act 1988 or any amendment thereof relating to the construction and use of motor vehicles.

(3) A person on foot must not enter any part of the new bridge area apart from the footways and cycleways unless directed to do so by an appointed person.

(4) A person with a bicycle must not enter any part of the new bridge area apart from the cycleways unless directed to do so by an appointed person.

(5) A person must not drive a motor vehicle onto the footways or cycleways unless directed to do so by an appointed person.

(6) A person must not take onto the new bridge any animal other than a dog unless the animal is enclosed in a motor vehicle or trailer.

(7) A person must not release an animal from a motor vehicle within the new bridge area.

(8) A person must not abandon a motor vehicle in the new bridge area except in an emergency and as directed by an appointed person.

(9) A person must not operate a motor vehicle music or sound system at such volume as to cause nuisance to people within the new bridge area.

(10) A person must not take or cause to be taken onto the new bridge a motor vehicle which by reason of its condition is likely to break down or is in such condition as is likely to injure persons or damage property.

(11) A person must not use or cause to be used a motor vehicle on the new bridge unless the load carried by the motor vehicle is at all times contained or secured (if necessary by physical restraint other than its own weight) and is in such a position that neither danger nor nuisance is caused or is likely to be caused to a person or property by reason of the load or any part of the load falling or being thrown from the motor vehicle.

(12) No driver of or passenger in a motor vehicle which has broken down may carry out repairs to or refuel a motor vehicle in the new bridge area without the consent of an appointed person.

(13) A driver of a motor vehicle which has broken down in the new bridge area must—

- (a) immediately notify an appointed person of the breakdown; and
- (b) switch on the motor vehicle's hazard lights.

(14) A driver of a motor vehicle which has shed its load in full or in part on the new bridge such that it has caused, or may cause, an obstruction or other hazard to users of the new bridge or to users of Lake Lothing must—

- (a) not attempt to reclaim the load;
- (b) immediately inform an appointed person of the loss of the load; and
- (c) immediately inform an appointed person of the identity of, and contact details for, the owner of the load.

(15) Any user of the new bridge must comply with any direction given by an appointed person or traffic notice, sign or signal within the new bridge area at any time.

## PART 4 GENERAL

### **Saving for appointed officers**

7. Nothing in these byelaws prevents an appointed person from undertaking an activity which would otherwise be prohibited by these byelaws provided such activity is undertaken in the execution of that person's duties as an appointed person.



# SCHEDULE 11

Articles 52 and 53

## TRAFFIC REGULATION MEASURES

### PART 1

#### SPEED LIMITS AND RESTRICTED ROADS

Note 1: Where roads are to become restricted roads as indicated in this Schedule (Part 1) and as shown on the plans relating to this Schedule (the traffic regulation measures plans (speed limits and restricted roads)), speed limits are to apply in accordance with the provision of the Road Traffic Regulations Act 1984 (which defines speed limits of 30mph on ‘restricted’ roads by reference to street lighting).

Note 2: Where existing speed limits (to be retained) are shown on the traffic regulation measures plans (speed limits and restricted roads) (sheets 1 and 2) which relate to Part 1 of this Schedule, this is for information only and such speed limits are not subject to this Order.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name number and length</i>	<i>(3)</i> <i>Speed limit and restricted roads status</i>
<i>The traffic regulation measures (speed limits and restricted roads) plans – sheet 1</i>		
In the administrative area of East Suffolk Council	A12 Lake Lothing Third Crossing A length of new highway from a point on the existing C970 Peto Way 135 metres to the east of the existing roundabout junction of Rotterdam Road and Denmark Road in a south easterly direction to a point where it joins the A12 Lake Lothing Third Crossing Northern Roundabout along both the northbound and southbound carriageways.	Restricted road
	A12 Lake Lothing Third Crossing Northern Roundabout A length of new highway comprising the A12 Lake Lothing Third Crossing Northern Roundabout along the entire length of the circulatory carriageway.	Restricted road
	A12 Lake Lothing Third Crossing A length of new highway from a point where it departs from the new A12 Lake Lothing Third Crossing Northern Roundabout to a point where it joins the existing roundabout junction of Rotterdam Road and Denmark Road along both	Restricted road

	the northbound and southbound carriageways.	
<i>The traffic regulation measures (speed limits and restricted roads) plans – sheets 1 and 2</i>		
In the administrative area of East Suffolk Council	A12 Lake Lothing Third Crossing A length of new highway from a point where it departs from the new A12 Lake Lothing Third Crossing Northern Roundabout in a generally southerly direction for a distance of 604 metres to a point where it joins the new A12 Lake Lothing Third Crossing Southern Roundabout along both the northbound and southbound carriageways.	Restricted road
<i>The traffic regulation measures (speed limits and restricted roads) plans – sheet 2</i>		
In the administrative area of East Suffolk Council	A12 Lake Lothing Third Crossing Southern Roundabout A length of improved highway comprising the Lake Lothing Third Crossing Southern Roundabout along the entire length of the circulatory carriageway.	Restricted road
	B1531 Waveney Drive A length of improved carriageway comprising the western spur of the new Lake Lothing Third Crossing Southern Roundabout in a westerly direction for a distance of 43 metres along both the westbound and eastbound carriageways.	Restricted road
	A12 Lake Lothing Third Crossing A length of improved carriageway comprising the eastern spur of the new Lake Lothing Third Crossing Southern Roundabout in an easterly direction for a distance of 33 metres, along both the westbound and eastbound carriageways.	Restricted road
	New Access Road from Waveney Drive to Riverside Road A length of new highway from a point on Waveney Drive 95 metres east of its junction with Waveney Crescent west, in a	Restricted road

	generally northerly direction for a distance of 236 metres and then in a generally easterly direction towards Riverside Road, for a distance of 158 metres.	
	<p><b>Canning Road</b> A length of new highway from a point on the existing Riverside Road 37 metres east of the entrance to premises known as Riverside (4 Canning Road), in a generally southerly direction for a distance of 90 metres to its junction with the improved Canning Road along both the northbound and southbound carriageways.</p>	Restricted road
	<p><b>Canning Road Roundabout</b> A length of improved highway on the existing Canning Road, comprising a new roundabout and improved access to premises known as Riverside (4 Canning Road) along the entire length of the circulatory carriageway and access.</p>	Restricted road
	<p><b>New Access Road to Control Tower and Nexen Group premises</b> A length of new highway from a point on the existing Riverside Road 55 metres east of the northern entrance to premises known as Riverside (4 Canning Road), in a generally north-easterly direction and forming a turning head for the Control Tower and providing new highway access to land on the east side of the new bridge southern approach (being premises occupied by Nexen), for a distance of 50 metres on the northbound and southbound carriageways.</p>	Proposed 30mph Speed Limit

## PART 2

### TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name number and length</i>	<i>(3)</i> <i>Measures</i>
<i>The traffic regulation measures plans (clearways and prohibitions) – sheet 1</i>		
In the administrative area of East Suffolk Council	A12 Lake Lothing Third Crossing  A length of new and improved highway from a point on the existing C970 Peto Way 173 metres to the west of the improved existing roundabout junction of Rotterdam Road and Denmark Road, in a south-easterly direction to a point where it joins the A12 Lake Lothing Third Crossing Northern Roundabout along both the northbound and southbound carriageways.	Clearway
	A12 Lake Lothing Third Crossing Northern Roundabout  A length of new circulatory highway comprising the A12 Lake Lothing Third Crossing Northern Roundabout along the entire length of the circulatory carriageway.	Clearway
	Denmark Road  A length of new and improved highway from a point where it departs from the proposed Lake Lothing Third Crossing Northern Roundabout along both the northbound and southbound carriageways to a point where it joins the improved roundabout forming the junction between Rotterdam Road and Denmark Road for a distance of 48 metres including the entire length of the circulatory carriageway.	Clearway
	Denmark Road	No waiting (at any time)

	<p>A length of improved highway from a point from the improved roundabout forming the junction between Rotterdam Road and Denmark Road for a distance of 165 metres in an easterly direction along the eastbound carriageway of Denmark Road.</p>	
	<p>Denmark Road</p> <p>A length of improved highway from a point from the improved roundabout forming the junction between Rotterdam Road and Denmark Road for a distance of 35 metres in an easterly direction along the westbound carriageway of Denmark Road.</p>	<p>No waiting (at any time)</p>
	<p>Rotterdam Road</p> <p>A length of improved highway from a point from the improved roundabout junction of Rotterdam Road and Denmark Road for a distance of 5 metres in a northerly direction along the northbound carriageway of Rotterdam Road.</p>	<p>No waiting (at any time)</p>
	<p>Rotterdam Road</p> <p>A length of improved highway from a point from the improved roundabout junction of Rotterdam Road and Denmark Road for a distance of 50 metres in a northerly direction along the southbound carriageway of Rotterdam Road.</p>	<p>No waiting (at any time)</p>
	<p>Peto Way</p> <p>A length of existing highway to be improved from a point where it departs from the proposed A12 Lake Lothing Third Crossing 129 metres west of the improved roundabout junction of Rotterdam Road and Denmark Road for a distance of 56 metres in an easterly direction to a point where it joins the new access road from the</p>	<p>Clearway</p>

	improved existing roundabout junction of Rotterdam Road and Denmark Road to the Lake Lothing Third Crossing Northern Roundabout.	
	Peto Way  A length of existing highway (eastbound carriageway only) from the point where it departs from the A12 Lake Lothing Third Crossing eastwards for a distance of 80 metres.	Prohibition of entry for vehicles travelling west.
<i>The traffic regulation measures plans (clearways and prohibitions) – sheets 1 and 2</i>		
In the administrative area of East Suffolk Council	A12 Lake Lothing Third Crossing  A length of new and improved highway from its junction with the A12 Lake Lothing Third Crossing Northern Roundabout in a generally southerly direction for a distance of 604 metres to its junction with the A12 Lake Lothing Third Crossing Southern Roundabout along both the northbound and southbound carriageways.	Clearway
<i>The traffic regulation measures plans (clearways and prohibitions) – sheet 2</i>		
In the administrative area of East Suffolk Council	A12 Lake Lothing Third Crossing Southern Roundabout  A length of new circulatory highway comprising the A12 Lake Lothing Third Crossing Southern Roundabout along the entire length of the circulatory carriageway.	Clearway
	New Access Road from Waveney Drive to Riverside Road  A length of new highway from a point on Waveney Drive 100 metres east of its junction with Waveney Crescent West, in a generally northerly direction for a distance of 236 metres along both the northbound and southbound carriageways.	No waiting (at any time)
	Riverside Road  A length of new highway from a point on the existing	No waiting (at any time)

	<p>Riverside Road 175 metres west of the northern entrance to premises known as Riverside (4 Canning Road), in an easterly direction towards the existing Riverside Road, for a distance of 107 metres on the eastbound carriageway</p>	
	<p>Riverside Road</p> <p>A length of improved highway from a point on the existing Riverside Road 47 metres west of the northern entrance to premises known as Riverside (4 Canning Road), in an easterly direction towards the existing Riverside Road, for a distance of 25 metres on the eastbound carriageway</p>	<p>No waiting (at any time)</p>
	<p>Riverside Road</p> <p>A length of improved highway from a point on the existing Riverside Road 43 metres east of the northern entrance to premises known as Riverside (4 Canning Road), in an easterly direction towards the existing Nexen access for a distance of 65 metres on the eastbound carriageway</p>	<p>No waiting (at any time)</p>
	<p>New Access Road to Control Tower and Nexen Group premises</p> <p>A length of new highway from a point on the existing Riverside Road 55 metres east of the northern entrance to premises known as Riverside (4 Canning Road), in a generally north-easterly direction and forming a turning head for the Control Tower and new highway access to land on the east side of the new bridge southern approach (being premises occupied by Nexen), for a distance of 50 metres on the northbound and southbound carriageways.</p>	<p>No waiting (at any time)</p>
	<p>Riverside Road</p> <p>A length of new and improved highway from a point on the existing Riverside Road 145</p>	<p>No waiting (at any time)</p>

	metres west of the northern entrance to premises known as Riverside (4 Canning Road), in an easterly direction towards the existing Nexen access, for a distance of 250 metres on the westbound carriageway	
	<p>New Access Road from Riverside Road to Canning Road</p> <p>A length of new highway from a point on the existing Riverside Road 37 metres east of the northern entrance to premises known as Riverside (4 Canning Road), in a generally southerly direction for a distance of 90 metres to its junction with the improved Canning Road along the southbound carriageways.</p>	No waiting (at any time)
	<p>New Access Road from Riverside Road to Canning Road</p> <p>A length of new highway from a point on the existing Riverside Road 37 metres east of the northern entrance to premises known as Riverside (4 Canning Road), in a generally southerly direction for a distance of 6 metres to its junction with the improved Canning Road along the northbound carriageway.</p>	No waiting (at any time)
	<p>New Access Road forming new eastern entrance into Riverside</p> <p>A length of new highway from a point on the existing Canning Road 55 metres west of the Registry Office access in a westerly direction for a distance of 10 metres along both the eastbound and westbound carriageways.</p>	No waiting (at any time)
	<p>New Access Road south from Canning Road</p> <p>A length of new highway from the improved junction of</p>	No waiting (at any time)



	Canning Road in a southerly direction for a distance of 45 metres on the northbound carriageway.	
	Canning Road  The length of the existing Canning Road from a point 19 metres east of the improved entrance to the premises known as Riverside (4 Canning Road) in a generally south-westerly direction for a distance of 32 metres along the eastern side of the carriageway only.	No waiting (at any time)
	Canning Road  A length of improved highway from a point on the existing Canning Road 8 metres east of the Registry Office Access for a length of 9 metres in an easterly direction and being the length of highway comprising the new Canning Road turning head	No waiting (at any time)
	Durban Road  From a point 185 metres north east of the junction of Kimberley Road with Durban Road, in a generally north-easterly direction for a distance of 36 metres, and being the length of highway comprising the new Durban Road turning head.	No waiting (at any time)
	B1531 Waveney Drive  On the north side, from the new A12 Lake Lothing Third Crossing Southern Roundabout for a distance of 50 metres in an easterly direction.  On the south side, from the new A12 Lake Lothing Third Crossing Southern Roundabout for a distance of 40 metres in an easterly direction.	Clearway
	B1531 Waveney Drive	No waiting (at any time)

	An improved length of the existing Waveney Drive from a point 55 metres east of its junction with Waveney Crescent West in an easterly direction for 130 metres along both the westbound and eastbound carriageways.	
	B1531 Waveney Drive  Waveney Drive from a point 80 metres west of the A12 Lake Lothing Third Crossing Southern Roundabout in an easterly direction for a distance of 80 metres along both the westbound and eastbound carriageways.	Clearway
	Durban Road  A length of the improved Durban Road from a point 450 metres north east of the existing junction of Kimberley Road with Durban Road for a distance of 5 metres, south-west from the outer edge of the Lake Lothing Third Crossing Southern Roundabout across both the northbound and southbound carriageways	The prohibition of use by motorised vehicles except for emergency vehicles which may access Durban Road from both its southern and northern ends (including via its junction with the new southern roundabout) and may travel either northbound or southbound on Durban Road; and except for the motorised vehicles of owners and occupiers of and visitors to No. 1b Durban Road in respect of which access is permitted via the southern end of Durban Road only.
<i>The traffic regulation measures plans (clearways and prohibitions) – sheet 3</i>		
In the administrative area of East Suffolk Council	Kimberley Road  A length of Kimberley Road for a distance of 28 metres in a westerly direction from its junction with Durban Road along both the eastbound and westbound carriageways.	No waiting (at any time) No loading or unloading (at any time).
	Kimberley Road  A length of Kimberley Road for a distance of 30 metres in an easterly direction from its junction with Waveney Drive along both the eastbound and westbound carriageways.	No waiting (at any time)
	Kirkley Run	No waiting (at any time)

	<p>A length of Kirkley Run for a distance of 41 metres in a southerly direction from a point 14 metres north of the centre of Notley Road along the edge of the north-westbound carriageway.</p>	
	<p>Kirkley Run</p> <p>A length of Kirkley Run for a distance of 24 metres in a southerly direction from the junction of Kirkley Run and Notley Road along the south-eastbound carriageway.</p>	<p>No waiting (at any time)</p>
	<p>Notley Road</p> <p>A length of Notley Road for a distance of 55 metres in a generally north-easterly direction from the junction with Kirkley Run along the westbound carriageway.</p>	<p>No waiting (at any time)</p>
	<p>Notley Road</p> <p>A length of Notley Road for a distance of 17 metres in an easterly direction from a point 79 metres east of the junction with Kirkley Run along the westbound carriageway.</p>	<p>No waiting (at any time)</p>
	<p>Notley Road</p> <p>A length of Notley Road for a distance of 17 metres in a generally easterly direction from a point 147 metres east of the junction with Kirkley Run along the westbound carriageway.</p>	<p>No waiting (at any time)</p>
	<p>Notley Road</p> <p>A length of Notley Road for a distance of 17 metres in a generally easterly direction from a point 199 metres east of the junction with Kirkley Run along the westbound carriageway.</p>	<p>No waiting (at any time)</p>
	<p>Notley Road</p> <p>A length of Notley Road for a distance of 17 metres in a westerly direction from a point 207 metres west of the</p>	<p>No waiting (at any time)</p>

	junction of Notley Road with Durban Road and the access to Waveney Gymnastics Club, on the westbound carriageway.	
	<p>Notley Road</p> <p>A length of Notley Road for a distance of 17 metres in an easterly direction from a point 174 metres west of the junction of Notley Road with Durban Road and the access to Waveney Gymnastics Club, on the westbound carriageway.</p>	No waiting (at any time)
	<p>Notley Road</p> <p>A length of Notley Road for a distance of 82 metres in an easterly direction from a point 85 metres west of the centre of the junction of Notley Road with Durban Road and the access to Waveney Gymnastics Club, on the westbound carriageway.</p>	No waiting (at any time)
	<p>Notley Road</p> <p>A length of Notley Road for a distance of 420 metres in an easterly direction from the junction with Kirkley Run along the eastbound carriageway.</p>	No waiting (at any time)
	<p>Notley Road</p> <p>A length of Notley Road for a distance of 17 metres in an easterly direction from a point 85 metres west of the centre of the junction of Notley Road with Durban Road and the access to Waveney Gymnastics Club, on the eastbound carriageway.</p>	No waiting (at any time)
	<p>Notley Road</p> <p>A length of Notley Road for a distance of 21 metres in a generally westerly direction from the centre of the junction between Notley Road, Durban Road and the access to Waveney Gymnastics Club along the eastbound carriageway.</p>	No waiting (at any time)
	Durban Road	No waiting (at any time)

	A length of Durban Road for a distance of 21 metres in a north-easterly direction from the junction of Notley Road with Durban Road and the access to Waveney Gymnastics Club, on the north-eastbound carriageway.	
	Durban Road  A length of Durban Road for a distance of 16 metres in a south-westerly direction from a point 18 metres east of the junction of Notley Road with Durban Road and the access to Waveney Gymnastics Club, on the south-westbound carriageway.	No waiting (at any time)
	Access to Waveney Gymnastics Club  Access to Waveney Gymnastics Club for a distance of 67 metres in a generally south-westerly direction from the junction of Notley Road with Durban Road and the access to the Waveney Gymnastics Club, on both sides of the carriageway.	No waiting (at any time)

### PART 3

#### REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1) Area</i>	<i>(2) Road name number and length</i>	<i>(3) Order</i>	<i>(4) Revocations or variations</i>
<i>The traffic regulation measures plans (clearways and prohibitions) – sheet 1</i>			
In the administrative area of East Suffolk Council	Rotterdam Road  West side from a point 15 metres north of its junction with Eastern Way in a south-easterly direction to a point 15 metres east of its junction with Hervey Street.	District of Waveney (Various Roads in Lowestoft) (Prohibition of Waiting) Order 1987	Order to be partially revoked to the extent identified on sheet 1 by a dashed orange line.
	Denmark Road	District of Waveney (Various Roads in	Order to be partially revoked to the extent

	<p>The west side from a point 15 metres north of its junction with Eastern Way in a south-easterly direction to a point 15 metres east of its junction with Hervey Street save for a length of 25 metres where it passes across the existing junction of Denmark Road, Rotterdam Road and Peto Way.</p>	<p>Lowestoft) (Prohibition of Waiting) Order 1987</p>	<p>identified on sheet 1 by a dashed orange line.</p>
	<p>Peto Way and Rotterdam Road</p> <p>From a point 37 metres south of its junction with Eastern Way in a south-westerly direction towards Peto Way for a distance of 6 metres.</p>	<p>Suffolk County Council (Eastern Way, Essex Road, Norfolk Street and Rotterdam Road) (Prohibition of Waiting, On-Street Parking Place and Revocation) Order 2012</p>	<p>Order to be partially revoked to the extent identified on sheet 1 by a dashed orange line.</p>
	<p>Peto Way</p> <p>North side and south side, from a point 102 metres east of the existing roundabout junction of Peto Way and Barnards Way for a distance of 180 metres in a generally easterly direction.</p>	<p>Suffolk County Council (Grove Road, Peto Way and St. Peters Street, Lowestoft) (Prohibition and Restriction of Waiting and Loading, Clearway and Revocation) Order 2009</p>	<p>Order to be partially revoked to the extent identified on sheet 1 by a dashed orange line.</p>
<p><i>The traffic regulation measures plans (clearways and prohibitions) – sheet 2</i></p>			
<p>In the administrative area of East Suffolk Council</p>	<p>Riverside Road</p> <p>West side, from a point 42 metres to the north-east of the centreline of its junction with Canning Road for a distance of 175 metres to the south to its junction with the B1351 Waveney Drive.</p> <p>East side, from a point 42 metres to the north east of the centreline of its junction with Canning Road for a distance of 175 metres to the south to its</p>	<p>The Borough of Lowestoft (St. Margaret's Road and Riverside Road) (Street Parking Places) Order 1966</p> <p>Suffolk County Council (South Lowestoft Relief Road – Associated Measures) (Various Roads, Lowestoft and Carlton Colville) (Prohibition and Restriction of Waiting, Additional Measures and Revocation) Order 2006</p>	<p>Orders to be partially revoked to the extent identified on sheet 2 by a dashed orange line.</p>

	<p>junction with the B1351 Waveney Drive.</p>	<p>Suffolk County Council (Canning Road and U336 Riverside Road, Lowestoft) (Prohibition of Waiting and Revocation) Order 2016</p>	
	<p>Canning Road</p> <p>North side, from the existing access to Riverside in an easterly direction for a distance of 20 metres.</p> <p>West side, from the existing access to Riverside in a generally southerly direction for a distance of 57 metres.</p> <p>South side, from a point 20 metres east of the entrance to the Registrar's Office in a south-westerly direction for a distance of 20 metres.</p>	<p>The Lowestoft (General) (Prohibition and Restriction of Waiting) (Amendment) (No.2) Order 1972</p> <p>Suffolk County Council (Lowestoft Central Relief Roads) (Prohibition and Restriction of Waiting) (No.2) Order 1977</p> <p>Suffolk County Council (Canning Road and U336 Riverside Road, Lowestoft) (Prohibition of Waiting and Revocation) Order 2016</p>	<p>Orders to be partially revoked to the extent identified on sheet 2 by a dashed orange line.</p>
	<p>B1351 Waveney Drive</p> <p>North side, from the centreline of Riverside Road in an easterly direction for a distance of 108 metres.</p> <p>North side, from the centreline of its junction with Riverside Road for a distance of 65 metres in a generally westerly direction.</p> <p>South side, from a point 60 metres to the west of the centreline of its junction with Durban Road for a distance of 50 metres in a north-easterly direction and then for a distance of</p>	<p>The Lowestoft (General) (Prohibition and Restriction of Waiting) (Amendment) (No.2) Order 1972</p> <p>Suffolk County Council (South Lowestoft Relief Road – Associated Measures) (Various Roads, Lowestoft and Carlton Colville) (Prohibition and Restriction of Waiting, Additional Measures and Revocation) Order 2006</p>	<p>Orders to be partially revoked to the extent shown on sheet 2 by a dashed orange line.</p>

	25 metres in a south-westerly direction. South side, from a point 56 metres west of its junction with Tom Crisp Way for a distance of 62 metres in a generally westerly direction and then for a distance of 30 metres in a generally south-westerly direction.		
<i>The traffic regulation measures plans (clearways and prohibitions) – sheet 3</i>			
In the administrative area of East Suffolk Council	Kimberley Road  North side and south side for a distance of 10 metres from its junction with Durban Road in a generally westerly direction.	District of Waveney (Various Roads Lowestoft) (Prohibition and Restriction of Waiting) Order 1999	Order to be partially revoked to the extent identified on sheet 3 by a dashed orange line.



## DEEMED MARINE LICENCE

## PART 1

## GENERAL

**Interpretation****1.** In this licence—

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the authorised development” has the meaning given in paragraph 3(2);

“commence” means beginning to carry out any part of a licensed activity and “commenced” and “commencement” are to be construed accordingly;

“condition” means a condition in Part 2, Part 3 and Part 4 of this licence and references in this licence to numbered conditions are to the conditions with those numbers in Part 2;

“construction activity” means—

(a) any licensed activity to be undertaken during the construction of the authorised development; and

(b) any licensed activity to be undertaken for the purposes of maintaining the authorised development, with the exception of any maintenance dredging activity;

“capital dredging activity” means an activity which comprises the excavation of the seabed, in an area or down to a level (relative to Ordnance Datum) not previously dredged during the preceding 10 years;

“the environmental statement” has the same meaning as in the Order;

“the harbour master” has the same meaning as in the Order;

“Lake Lothing” means the navigable saltwater lake within the town of Lowestoft in the area of East Suffolk Council between the North Sea and Oulton Broad, as identified by reference points 652111E, 292801N, 655207E, 292615N respectively;

“the licence holder” means the undertaker or any transferee under article 48 of the Order;

“licensed activity” means any of the activities specified in Part 1 of this licence;

“maintenance dredging activity” means any activity which comprises the removal of recently-accumulated sediments such as mud, sand and gravel in order to keep channels, berths and other areas at their designed depths and which takes place in circumstances where—

(c) the level of the seabed to be restored by the dredging is not lower than it has been at any time during the past 10 years; and

(d) there is evidence that dredging has previously been undertaken to that level (or lower) during that period;

“marine pollution contingency plan” means the plan as required by condition 8 of this licence;

“the Order” means the Lake Lothing (Lowestoft) Third Crossing Order 201[\*]; and

“the scheme-wide written scheme of investigation” means the document of that description as identified in Schedule 14 to the Order, and certified by the Secretary of State as the scheme-wide written scheme of investigation for the purposes of the Order;

**2.**—(1) Except where otherwise indicated, the main point of contact with the MMO and the address for email and postal returns and correspondence are as follows—

(a) Marine Management Organisation

Marine Licensing Team  
Lancaster House  
Hampshire Court  
Newcastle upon Tyne  
NE4 7YH  
Tel—0300 123 1032  
Fax—0191 376 2681  
Email—marine.consent@marinemanagement.org.uk

(b) Marine Management Organisation

MMO Lowestoft  
Pakefield Road  
Lowestoft  
Suffolk  
NR33 0HT  
Tel—01502 573 149 or 01502 572 769

Email—lowestoft@marinemanagement.org.uk

(2) The contact details for the MMO Marine Pollution Response Team are—

Tel (during office hours)—0300 200 2024

Tel (outside office hours)—07770 977 825 or 0845 051 8486

Email—dispersants@marinemanagement.org.uk

or such replacement contact details notified to the licence holder in writing by the MMO.

(3) Unless otherwise stated in writing by the MMO, all notices required by this licence to be sent by the licence holder to the MMO must be sent by email.

### **Details of licensed marine activities**

3.—(1) Subject to the licence conditions in Part 2, this licence authorises the licence holder (and any agent, contractor or subcontractor acting on its behalf) to carry out any licensable marine activities under section 66(1) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

(2) In this paragraph “the authorised development” means—

- (a) the construction of piers in Lake Lothing;
- (b) the construction of piles and pile caps within Lake Lothing supporting piers and fendering; and
- (c) the construction of fendering within Lake Lothing;
- (d) the construction of a mooring within Lake Lothing;
- (e) the powers conferred by article 43(1);
- (f) for the purposes of or in connection with the construction of any of the works and other development mentioned above, ancillary or related development which does not give rise to any materially new or materially different effects than those assessed in the environmental statement, consisting of—
  - (i) activities within Lake Lothing to—
    - (aa) alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure (including lake walls);

- (bb) carry out excavations and clearance, deepening, scouring, cleansing, dumping and pumping operations;
- (cc) carry out dredging, which may include such dredging works as may be required to provide side slopes or otherwise secure the dredged area against situation, scouring or collapse;
- (dd) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(a)) obtained in carrying out any such operations;
- (ee) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);
- (ff) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of the lake;
- (gg) construct, place and maintain works and structures including piled fenders, protection piles and cofferdams; and
- (hh) provide lighting, signage and aids to navigation,
- (ii) other works and development—
  - (aa) to place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to statutory undertakers, utility companies and others in, under or above land, including mains, sewers, drains, pipes, cables, lights, cofferdams, fencing and other boundary treatments including bollards and security cameras;
  - (bb) embankments, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, drainage works, outfalls, pollution control devices, pumping stations, culverts, wing walls, fire suppression system water tanks and associated plant and equipment, highway lighting and fencing; and
  - (cc) to alter the course of, or otherwise interfere with, navigable or non-navigable watercourses;
- (iii) such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance, operation or use of the authorised development, including—
  - (aa) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
  - (bb) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works; and
- (iv) activities to carry out works and development of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the operation and maintenance of the authorised development; and
- (g) any other development within the meaning of section 32 of the 2008 Act that is authorised by the Order.

(3) The coordinates for the area of Lake Lothing within which the licence holder may carry out licensed activities except for the disposal of materials at sea are specified below and more particularly shown on the works plans—

<i>Point reference</i>	<i>Northing</i>	<i>Easting</i>
1	52.474911207	1.733489517
2	52.474849891	1.733838101
3	52.474859620	1.733843345

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(a) 1995 c.21

4	52.474284891	1.737130879
5	52.473912859	1.739236608
6	52.473894308	1.739340178
7	52.472403935	1.739857854
8	52.472377859	1.739259917
9	52.472651586	1.739120380
10	52.472715280	1.739125784
11	52.473064828	1.738231175
12	52.473243521	1.737535204
13	52.473977989	1.733117287

(4) The licence holder must ensure that dredged material approved for disposal at sea pursuant to condition 15(4) must be disposed of within the disposal site TH005 Lowestoft Circular North within the coordinates set out in the table below (or any other disposal site approved in writing by the MMO).

<i>Northing</i>	<i>Easting</i>
52.48163	1.7867
52.48161	1.786138
52.48156	1.785583
52.48147	1.785042
52.48135	1.784515
52.4812	1.784013
52.48102	1.783538
52.4808	1.783098
52.48056	1.782697
52.4803	1.782337
52.48002	1.782023
52.47971	1.781758
52.4794	1.781547
52.47907	1.78139
52.47873	1.78129
52.47839	1.781247
52.47804	1.781262
52.4777	1.781333
52.47737	1.781462
52.47705	1.781647
52.47674	1.781885
52.47644	1.782173
52.47617	1.782512
52.47592	1.782893
52.47569	1.783315
52.47549	1.783772
52.47532	1.784262
52.47518	1.784775
52.47508	1.78531
52.47501	1.78586
52.47497	1.78642
52.47497	1.78698
52.47501	1.78754

52.47508	1.78809
52.47518	1.788625
52.47532	1.789138
52.47549	1.789628
52.47569	1.790085
52.47592	1.790507
52.47617	1.790888
52.47644	1.791227
52.47674	1.791515
52.47705	1.791753
52.47737	1.791938
52.4777	1.792067
52.47804	1.792138
52.47839	1.792153
52.47873	1.79211
52.47907	1.79201
52.4794	1.791853
52.47971	1.791642
52.48002	1.791377
52.4803	1.791063
52.48056	1.790703
52.4808	1.790302
52.48102	1.789862
52.4812	1.789387
52.48135	1.788885
52.48147	1.788358
52.48156	1.787817
52.48161	1.787262

## PART 2

### CONDITIONS APPLYING TO CONSTRUCTION ACTIVITIES

#### **Construction method statement**

4.—(1) The licence holder must submit a method statement, for approval by the MMO following consultation with the Environment Agency, at least 8 weeks prior to the commencement of any construction activity.

(2) The method statement must include the following details—

- (a) the detailed construction methodology to be employed by the licence holder in carrying out the construction activity;
- (b) in the case of construction of the authorised development, the detailed dredging methodology to be employed by the licence holder and confirmation as to whether the dredging proposed is to be a capital dredging activity or a maintenance dredging activity;
- (c) a programme of works including timings and durations, method of delivery of material to site and plant to be used during the works;
- (d) a report of the consultation with the Environment Agency carried out under sub-paragraph (1);

- (e) provision that within the marine environment vibro piling techniques are to be used as standard, with percussive piling only used if required to drive a pile to its design depth. If percussive piling is necessary, soft-start procedures are to be used to ensure incremental increase in pile power, over a period of not less than 20 minutes, until full operational piling power is achieved; and where percussive piling ceases for a period longer than 10 minutes, the soft-start procedure must be repeated; and
  - (f) where dredged materials arising are intended to be disposed of at sea, the method statement must be accompanied by valid sediment sampling analysis pursuant to conditions 15.
- (3) The licence holder must not commence the construction activity concerned until the MMO has approved in writing the submitted method statement.
- (4) The construction activity concerned must be carried out in accordance with the approved method statement, unless otherwise agreed in writing by the MMO.

### **Post construction**

5. The licence holder must remove all temporary structures, waste and debris associated with all construction activities within Lake Lothing within 4 weeks of completion of the final construction activity.

## **PART 3**

### **CONDITIONS APPLYING TO MAINTENANCE DREDGING TO BE UNDERTAKEN POST CONSTRUCTION**

#### **Maintenance dredging method statement**

6.—(1) The licence holder must submit a method statement, for approval by the MMO following consultation with the Environment Agency, at least 8 weeks prior to the commencement of any maintenance dredging activity that is to be carried out by the licence holder following completion of construction of the authorised development.

- (2) The method statement must include the following details—
- (a) the detailed methodology to be employed by the licence holder in carrying out the maintenance dredging activity;
  - (b) a programme of works including timings and durations and plant to be used during the maintenance dredging activity;
  - (c) a report of the consultation with the Environment Agency carried out under sub-paragraph (1); and
  - (d) where dredged materials arising are intended to be disposed of at sea, the method statement must be accompanied by valid sediment sampling analysis pursuant to conditions 15.

(3) The licence holder must not commence the maintenance dredging activity until the MMO has approved in writing the submitted method statement.

(4) The maintenance dredging activity must be carried out in accordance with the approved method statement, unless otherwise agreed in writing by the MMO.

## PART 4

### CONDITIONS APPLYING TO ALL LICENSABLE ACTIVITIES INCLUDING CONSTRUCTION ACTIVITIES AND MAINTENANCE DREDGING ACTIVITIES

#### **Notification of commencement and completion of construction activities only**

7.—(1) The licence holder must—

- (a) inform the MMO local office in writing at least 5 days prior to the commencement of the first construction activity and within 5 days of completion of the final licensed construction activity;
- (b) send copies of the notifications required under paragraph (a) to the MMO Marine Licensing Team within 5 days of the date of these notifications;
- (c) send a notification of the commencement of works to the UK Hydrographic Office at least two weeks prior to the commencement of the works together with a request for confirmation as to whether an update of published nautical charts and marine safety information is required;
- (d) send copies of the notifications required under paragraph (c) to the MMO Marine Licensing Team within 24 hours of issue;
- (e) send a notification of the final completion of licensed activities to The Source Data Receipt team, UK Hydrographic Office, Taunton, Somerset, TA1 2DN (Email: sdr@ukho.gov.uk; Tel: 01823 337900) within two weeks of the date of final completion of the licensed activities;
- (f) send a copy of the notification required under paragraph (e) to the MMO Licensing Team within one week of the notification being first issued;
- (g) issue a notice to mariners at least 5 days prior to the commencement of the first construction activity and within 5 days of completion of the final construction activity, or, if MMO agrees in writing, request that the harbour master issues the notice of mariners on its behalf; and
- (h) send copies of the notifications required under paragraph (g) to the MMO Marine Licensing Team within 5 days of the date of these notifications.

(2) Where impact piling is required as part of a construction method statement approved by the MMO under condition 4 the licence holder must—

- (a) prior to the commencement of a licensed activity in Lake Lothing which involves impact piling—
  - (i) submit details of the expected location, start and end dates of impact pile driving to the Marine Noise Registry in order to satisfy the 'Forward Look' requirements of the Registry; and
  - (ii) send copies of the notifications required under sub-paragraph (i) to the MMO Marine Licensing Team within 5 days of the date of these notifications; and
- (b) within 12 weeks of completion of a licensed activity in Lake Lothing which involves impact piling—
  - (i) submit details of the expected location, start and end dates of impact pile driving to the Marine Noise Registry in order to satisfy the 'Close Out' requirements of the Registry; and
  - (ii) send copies of the notifications required under sub-paragraph (i) to the MMO Marine Licensing Team within 5 days of the date of these notifications.

### **Marine pollution contingency plan**

**8.**—(1) The licence holder must submit a marine pollution contingency plan, for approval by the MMO, at least 8 weeks prior to the commencement of any construction activity.

(2) The marine pollution contingency plan must set out the licence holder's assessment of the likely risks which could arise as a result of a spill or collision during construction and maintenance of the authorised development and the methods and procedures the licence holder intends to put in place to address those risks.

(3) The licence holder must consult the Environment Agency and the harbour authority on the marine pollution contingency plan before submitting it to the MMO and must submit a report of the consultation undertaken at the same time as submitting the marine pollution contingency plan under sub-paragraph (1).

(4) The licence holder must not commence the construction activities until the MMO has approved in writing the submitted marine pollution contingency plan.

(5) The construction activities must be carried out in accordance with the approved marine pollution contingency plan, unless otherwise agreed in writing by the MMO.

### **Vessels**

**9.**—(1) The licence holder must notify the MMO Licensing Team in writing of any vessel being used to carry on any licensed activities on behalf of the licence holder.

(2) A notification under sub-paragraph (1) must—

- (a) be received by the MMO no less than 24 hours before the commencement of the relevant construction activity; and
- (b) include the name of the master of the vessel, the vessel type, the vessel IMO number and details of the vessel owner or operating company.

(3) The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments have been read and understood by the master of any vessel being used to carry out any construction activities, and that a copy of this licence is held on board any such vessel.

### **Concrete and cement**

**10.**—(1) The licence holder must ensure that waste concrete, slurry or wash water from concrete or cement activities are not discharged, intentionally or unintentionally, into the marine environment.

(2) Unless otherwise agreed in writing by the MMO in approving a construction method statement under condition 4, the licence holder must contain and site concrete and cement mixing and washing areas away at least 10 metres away from Lake Lothing or any surface water drain to minimise the risk of run off entering Lake Lothing or any surface water drain.

(3) If concrete is to be sprayed, suitable protective sheeting must be provided to prevent rebounded or windblown concrete from entering the marine environment.

(4) Rebounded concrete material must be cleared away before protective sheeting is removed.

### **Coatings and treatments**

**11.** The licence holder must ensure that all coatings and treatments are suitable for use in the marine environment and are used in accordance with guidelines approved either by the Health and Safety Executive or by the Environment Agency.

### **Spills, etc.**

**12.** The licence holder must—



- (a) install bunding and/storage facilities to contain and prevent the release of, fuels, oils, and chemicals associated with plant, refuelling and construction equipment, into the marine environment;
- (b) use secondary containment with a capacity of no less than 110% of the container's storage capacity;
- (c) report any spill of oil, fuel or chemicals into the marine area to the MMO Marine Pollution Response Team, the harbour master and the Maritime and Coastguard Agency no later than 12 hours after the spill occurs; and
- (d) store all waste in designated areas that are isolated from surface water drains and open water and are bunded to contain any spillage.

**Scheme-wide written scheme of investigation**

13. All licensed activities must be carried out in accordance with the scheme-wide written scheme of investigation.

**Dropped objects**

14. All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within twenty four hours of the licence holder becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the licence holder (such as side scan sonar), and the MMO may require obstructions to be removed from the seabed at the licence holder's expense, if it is reasonable to do so.

**Disposal at sea**

15.—(1) Where dredged materials arising from a capital dredging activity or a maintenance dredging activity are intended to be disposed of at sea by the licence holder, the licence holder must submit to the MMO for its approval a sediment sampling plan request prior to the commencement of the capital dredging activity or maintenance dredging activity.

(2) A request for a sample plan under sub-paragraph (1) must include—

- (i) a detailed dredging methodology;
- (ii) dredge locations;
- (iii) dredge amounts (total and annual, if applicable);
- (iv) dredge depths;
- (v) duration of dredging activities;
- (vi) whether the dredge is a capital dredging activity or a maintenance dredging activity; and
- (vii) specific gravity of the material or material type.

(3) Where dredged materials arising from a maintenance dredging activity are intended to be disposed of by the licence holder, a sediment sampling plan shall not be required where valid analyses (carried out in accordance with an MMO-approved sample plan and undertaken by a laboratory validated by the MMO) is obtainable via the MMO's Public register.

(4) Any sediment sampling analyses undertaken by a laboratory validated by the MMO and approved by the MMO under sub-paragraph (1) is valid for a period of 3 years from the date when those analyses were undertaken.

16. The licence holder must not dispose of any dredged materials at sea until written approval is provided by the MMO, such approval to be given at the same time as any approval of a method statement under condition 4 or condition 6.

17. The licence holder must inform the MMO of the location and quantities of material disposed of each month under this licence. This information must be submitted to the MMO by 15 February

each year for the months August to January inclusive, and by 15 August each year for the months February to July inclusive.

18. The material to be disposed of within the disposal site referred to in condition 3(4) must be placed within the boundaries of that site.

19. During the course of disposal at sea, material must be distributed evenly over the disposal site.

## PART 5

### PROCEDURE FOR THE DISCHARGE OF CONDITIONS

#### Meaning of “application”

20. In this Part, “application” means a submission by the licence holder for approval by the MMO of any method statement, plan or samples under conditions 4, 6, 8 and 9.

#### Further information regarding application

21.—(1) The MMO may request in writing such further information from the licence holder as is necessary to enable the MMO to consider the application.

#### Determination of application

22.—(1) In determining the application the MMO may have regard to—

- (a) the application and any supporting information or documentation;
- (b) any further information provided by the licence holder in accordance with paragraph 11; and
- (c) such other matters as the MMO thinks relevant.

(2) Having considered the application the MMO must—

- (a) grant the application unconditionally;
- (b) grant the application subject to the conditions the MMO thinks fit; or
- (c) refuse the application.

(3) In determining an application, the MMO may discharge its obligations under sub-paragraph (2)(a), (b) or (c) separately in respect of a part of the application only, where it is reasonable to do so.

#### Notice of determination

23.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the licence holder of the determination of the application within 8 weeks from the day immediately following that on which the application is received by the MMO, or as soon as reasonably practicable after that date.

(2) Where the MMO has made a request under condition 21, the MMO must give notice to the licence holder of the determination of the application no later than 8 weeks from the day immediately following that on which the further information is received by the MMO, or as soon as reasonably practicable after that date.

(3) Where the MMO determines it is not reasonably practicable to make a determination pursuant to sub-paragraph (1) or (2) in 8 weeks, it shall notify the licence holder as soon as reasonably practicable and provide confirmation in writing of the intended determination date.

(4) Where the MMO refuses the application the refusal notice must state the reasons for the refusal.

## PROTECTIVE PROVISIONS

## PART 1

## FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. The provisions of this Part of this Schedule have effect for the protection of statutory undertakers unless otherwise agreed in writing between the undertaker and the statutory undertaker in question.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by the statutory undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by the statutory undertaker for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition of that term—
  - (i) mains, pipes or other water apparatus belonging to or maintained by the statutory undertaker for the purposes of water supply; and
  - (ii) mains, pipes or other water apparatus that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(b); and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act(c),

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“statutory undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

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(a) 1989 c.29.

(b) 1991 c. 56. Section 51A was inserted by section 92(1) of the Water Act 2003 (c. 37), and subsequently amended by section 10(1) and (2) of the Water Act 2014 (c. 21).

(c) Section 102(4) was amended by section 96(1)(c) to (e) and (3) of the Water Act 2003. Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003, section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to, the Water Act 2014.

- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
  - (g) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by Part 3 of the 1991 Act.

4.—(1) Regardless of the temporary stopping up, alteration or diversion of streets under the powers conferred by article 11 (temporary stopping up and restriction of use of streets), a statutory undertaker is at liberty at all times to take all necessary access across any such street and to carry out and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary stopping up, alteration or diversion was in that street.

(2) Where any street is stopped up under article 10 (permanent stopping up of streets and private means of access), any statutory undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the statutory undertaker legal easements reasonably satisfactory to the statutory undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the statutory undertaker to require the removal of that apparatus under paragraph 6 or to carry out works under paragraph 8.

5. Despite any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the statutory undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a statutory undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the statutory undertaker in question in accordance with sub-paragraphs (2) to (8).

(2) If, for the purpose of carrying out any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the statutory undertaker in question 28 days' written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) The obligation imposed on the statutory undertaker under sub-paragraph (3) does not extend to the exercise by the statutory undertaker of any power to acquire any land or rights in land by compulsory purchase order.

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(a) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27) and Part 1 of Schedule 23 to the Energy Act 2004 (c.20). There are further amendments to section 7 but none are relevant.

(5) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 60 (arbitration).

(6) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 60, and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(7) Regardless of anything in sub-paragraph (6), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to carry out any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being carried out by the statutory undertaker, may be carried out by the undertaker, with the prior written consent of the statutory undertaker (which must not be unreasonably withheld or delayed and is to be subject to any such conditions as are reasonable and proper to protect the apparatus) in accordance with plans and in a position agreed between the statutory undertaker and the undertaker or, in default of agreement, determined by arbitration in accordance with article 60, without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(8) In carrying out any work under sub-paragraph (7) the undertaker must comply with all statutory obligations which would have been applicable had the works been carried out by the statutory undertaker.

(9) Nothing in sub-paragraph (7) authorises the undertaker to carry out the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or carry out any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 60 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in land of the undertaker, the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the new bridge and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to any apparatus constructed in, under, over or above the new bridge area for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the carrying out of any works authorised by this Order that will or may affect any apparatus the removal of which has not been required by the

undertaker under paragraph 6(2), the undertaker must submit to the statutory undertaker in question a plan, section and description of the works to be carried out.

(2) Those works must be carried out only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the carrying out of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a statutory undertaker in accordance with sub-paragraphs (2) and (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 4 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the carrying out of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) Nothing in sub-paragraph (6) entitles the undertaker to carry out works to any apparatus but, upon receipt of notice from the undertaker, the statutory undertaker must proceed to carry out such works as may be required without unnecessary delay.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker in question the proper and reasonable expenses incurred by that statutory undertaker in, or in connection with the inspection, removal, relaying, replacing, alteration or protection of any apparatus under any provision of this Part of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of facilities and rights or exercise of statutory powers for such apparatus) including the cutting off of any apparatus from any other apparatus or the making safe of any redundant apparatus as a consequence of the exercise by the undertaker of any power under this Order and the surveying of any land or works, the inspection, superintendence and monitoring of works or the removal of any temporary works reasonably necessary in consequence of the exercise of the undertaker of any power under this Order.

(2) The value of any apparatus removed under this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 60 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-

paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker in question any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) indemnify the statutory undertaker against all reasonable claims, penalties, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or reasonably and properly incurred by, the statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**11.** If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to that apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**12.**—(1) For the protection of any operator, the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and the operator.

(2) In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

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(a) 2003 c.21.

“electronic communications apparatus” has the same meaning as in the electronic communications code<sup>(a)</sup>;

“the electronic communications code” has the same meaning as in section 106 (1) (application of the electronic communications code) of the 2003 Act<sup>(b)</sup>;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code;

“operator” means the operator of an electronic communications code network.

**13.** The exercise of the powers of article 34 (statutory undertakers) is subject to Part 10 of the electronic communications code (undertaker’s works affecting electronic communications apparatus).

**14.—**(1) Subject to sub-paragraphs (2) to (3), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the Company reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the Company which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**15.** Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 60.

**16.** This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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(a) See paragraph 5 of Schedule 3A (the electronic communications code) to the Communications Act 2003 (c.21). Schedule 3A was inserted by Schedule 1 to the Digital Economy Act 2017 (c. 30).

(b) Section 106 was amended by section 104(3) to (9) of the Digital Economy Act 2017 (c.30).



## PART 3

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

17. The following provisions of this Part of this Schedule apply for the protection of the Agency unless otherwise agreed in writing between the Environment Agency and the undertaker.

18. In this Part of this Schedule—

“the Agency” means the Environment Agency;

“completion” in relation to a specified work means the date on which it is brought into use;

“construction” includes execution, placing, altering, replacing, relaying, removal and excavation and “construct” and “constructed” have corresponding meanings;

“drainage work” includes any land which provides or is expected to provide flood storage capacity for Lake Lothing and any bank, wall, embankment or other structure, or any appliance constructed or used for land drainage, flood defence or tidal monitoring;

“the fishery” means Lake Lothing;

“plans” includes sections, drawings, sediment risk analysis, specifications, calculations and method statements; and

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in Lake Lothing and any other watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to the fishery;
- (d) affect the conservation, distribution or use of water resources; or
- (e) affect the conservation value of Lake Lothing and habitats in its immediate vicinity;

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

19.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency or determined under paragraph 30.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental and recreational duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) Without limiting sub-paragraph (3), the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

(6) Any specified work, and all protective works required by the Agency under sub-paragraph (4) must be constructed—

- (a) without unreasonable delay in accordance with the plan approved under this Schedule; and
- (b) to the reasonable satisfaction of the Agency;

and the Agency is entitled by its officers to watch and inspect the construction of such works.

(7) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

**20.** The undertaker must give to the Agency notice in writing of the commencement of any specified work not less than 14 days prior to its commencement and notice in writing of its completion not later than 7 days after such completion.

**21.—**(1) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work to the reasonable satisfaction of the Agency, and where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(2) Subject to sub-paragraph (3) if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub paragraph (1) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which a notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 30.

**22.—**(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5) and paragraph 26, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any expenditure incurred by the Agency in so doing is to be recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with this Part of this Schedule the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 30.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so.

**23.** Subject to paragraph 26, if by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

**24.** If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 48 hours of the undertaker becoming aware of such obstruction.

**25.—(1)** The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 26, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to the fishery, the undertaker fails to take such steps as are described in a notice served pursuant to sub-paragraph (1), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) Subject to paragraph 26, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to a fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expense incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice

**26.—(1)** The undertaker must indemnify the Agency in respect of all reasonable costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Part of this Schedule; or
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**27.—**(1) The undertaker is responsible for and must indemnify the Agency against all costs and losses not otherwise provided for in this Part of this Schedule which may be incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development, and

(2) In sub-paragraph (1)—

- (a) “costs” includes—
  - (i) expenses and charges;
  - (ii) staff costs and overheads; and
  - (iii) legal costs.

(3) The undertaker must indemnify the Agency against all liabilities, claims and demands arising out of or in connection with the authorised development or works otherwise outside of the matters referred to in sub-paragraph (1)(a) and (1)(b).

(4) In sub-paragraph (3)—

- (a) “claims” and “demands” include as applicable—
  - (i) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand; and
  - (ii) any interest element of sums claimed or demanded; and
- (b) “liabilities” includes—
  - (i) contractual liabilities;
  - (ii) tortious liabilities (including liabilities for negligence or nuisance);
  - (iii) liabilities to pay statutory compensation or for breach of statutory duty; and
  - (iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

**28.** The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof is to be made without the agreement of the undertaker which agreement must not be unreasonably withheld.

**29.** The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

**30.** Any difference or dispute arising between the Agency and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the Agency and the undertaker, be determined by arbitration in accordance with article 60 (arbitration).

## PART 4

### FOR THE PROTECTION OF RAILWAY INTERESTS

**31.** The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail, and in the case of paragraph 45, any other person on whom rights or obligations are conferred by that paragraph.

**32.** In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 (licences) of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 0204587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“protective works” means any works specified by the engineer under paragraph 35(4);

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993(b)) or station lease;

“railway property” means any railway belonging to Network Rail and-

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for or connected with the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

**33.—**(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property or rights over railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

**34.—**(1) The undertaker must not exercise the powers conferred by articles 4 (development consent etc granted by the Order), 10 (permanent stopping up of private means of access, 11 (temporary stopping up and restriction of use of streets, 12 (access to works) 14 (use of private roads for construction), 15 (discharge of water), 16 (protective works to buildings), 17 (authority to survey and investigate land) 18 (felling or lopping of trees), 19 (trees subject to tree preservation orders), 22 (compulsory acquisition of land), 25 (compulsory acquisition of rights), 26 (acquisition of subsoil and airspace only), 27 (private rights over land) 28 (power to override easements and other rights), 29 (rights over or under streets), 32 (temporary use of land for carrying out the authorised development), 33 (temporary use of land for maintaining the authorised development), 34 (statutory

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(a) 1993 c. 43. As amended by paragraphs 1 and 4 of Schedule 17 to the Transport Act 2000 (c. 38), paragraphs 1 and 5 of Schedule 2 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 3 of Schedule 1, and Schedule 13, to the Railways Act 2005 (c. 14) and S.I. 2015/1682.

(b) 1993 c.43.

undertakers), 35 (apparatus and rights of statutory undertakers in stopped up streets), 42 (maintenance of authorised development) and 43 (subsidiary works and operations in Lake Lothing) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) or the 1981 Act as applied or modified by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272(a) (extinguishment of rights of electronic communications code operators: preliminary notices) of the 1990 Act or article 34 (statutory undertakers) in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

**35.—**(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is to be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2) Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using those railways (including any relocation, decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

**36.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 35(4) must, when commenced, be constructed—

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(a) Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 35;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work or a protective work, the undertaker must, regardless any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**37.** The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work or a protective work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or a protective work or the method of constructing it.

**38.** Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**39.—**(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railways of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or the protective work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or protective is to be constructed, Network Rail must assume construction of that part of the specified work or the protective work and the undertaker must, regardless of any such approval of a specified work or the protective work under paragraph 35(2) pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 40(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**40.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 35(3) or in constructing any protective works under the provisions of paragraph 35(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work.

**41.—**(1) In this paragraph-

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 35(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 35(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified under to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified under to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 39(1) has effect subject to this sub-paragraph.



(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus under sub-paragraphs (5) or (6) –

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 36.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 45(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 40(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 60 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Engineering and Technology.

**42.** If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or the protective work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or that protective work in such state of maintenance as not adversely to affect railway property.

**43.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**44.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work or a protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**45.**—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or a protective work or the failure thereof or;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or a protective work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision must not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand must be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) must include sums equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator under sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or protective work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**46.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 45) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

**47.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**48.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans and the land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and

- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**49.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

**50.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 48 (transfer of benefit of order etc.) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**51.** The undertaker must no later than 28 days from the date that the documents submitted to and certified by the Secretary of State in accordance with article 58 (certification of documents) are certified by the Secretary of State, provide a set of those documents to Network Rail in the form of a computer disc with read only memory.

## PART 5

### FOR THE PROTECTION OF THE HARBOUR AUTHORITY

**52.** For the protection of the harbour authority the provisions of this Part of this Schedule, have effect unless otherwise agreed in writing.

**53.** In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation at or in the approaches to Lowestoft Harbour;

“erosion” means any erosion of the bed or banks of the lake or any quay or jetty or other structure of whatever nature within Lowestoft Harbour;

“plans” includes sections, descriptions, drawings, specifications, any navigation risk assessment updated under Requirement 11(2) or 11(4), proposed method statements and hydraulic information, including but not limited to information as to the discharge of water and materials;

“port land” means any land in Lowestoft Harbour held by the harbour authority for the purposes of its statutory undertaking; and

“specified work” means any tidal work or any other work or operation authorised by this Order on port land or which may affect port land or navigation in respect of Lowestoft Harbour of the functions or the harbour authority in relation to the operation of Lowestoft Harbour.

**54.—(1)** The undertaker must not, under the powers conferred by this Order, temporarily possess, acquire or use, or acquire new rights over, port land without the consent of the harbour authority.

(2) The undertaker must not exercise the powers conferred by article 17 (authority to survey and investigate land) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) in respect of any port land without the consent of the harbour authority.

(3) Article 28 (power to override easements and other rights) does not apply to any rights held by the harbour authority for the purpose of its statutory undertaking, except with the consent of the harbour authority.

(4) The consent of the harbour authority under this paragraph must not be unreasonably withheld but may be given subject to reasonable conditions.

(5) If the harbour authority fails to express its refusal of any request for a consent under—

- (a) sub-paragraph (1) in respect of temporary possession powers;

- (b) sub-paragraph (2); or
- (c) sub-paragraph (3),

within 30 days of such a request having been delivered to it, such a request is deemed to have granted by the harbour authority.

**55.**—(1) At least 56 days before commencing the construction or maintenance of any specified work, the undertaker must submit to the harbour authority plans of that work for its approval.

(2) Any approval of the harbour authority under this paragraph—

- (a) must not be unreasonably withheld;
- (b) may be given subject to such reasonable requirements as the harbour authority may make for the protection of Lowestoft Harbour and navigation within Lowestoft Harbour and the approaches to Lowestoft Harbour, including a requirement for the undertaker to carry out protective works at its own expense; and
- (c) must not restrict the powers granted to the undertaker under this Order where such powers do not affect the harbour authority's undertaking.

(3) The undertaker must carry out any specified work and any protective works required under sub-paragraph (2)(b) in accordance with the plans approved under sub-paragraph (1) or settled under article 60 (arbitration).

(4) If the harbour authority fails to express its disapproval of any plans or arrangements within 30 days after they have been delivered to it under sub-paragraph (1) it is deemed to have approved them.

**56.** The undertaker must at all reasonable times during construction of a specified work allow the harbour authority, its servants and agents, access to such work and all reasonable facilities for inspection of any such work subject always to the reasonable stipulations of the undertaker relating to delay to construction, health, safety, security and confidentiality.

**57.**—(1) After the purpose of any temporary works has been accomplished the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from the harbour authority requiring the undertaker so to do, remove any such temporary works or any materials relating to them which may have been placed on port land or below the level of high water within Lowestoft Harbour or the approaches to Lowestoft Harbour by or on behalf of the undertaker, and make good the land upon which the temporary works took place to the reasonable satisfaction of the harbour authority.

(2) If the undertaker fails to do so within a reasonable period after receiving such notice, the harbour authority may remove the same and may recover the reasonable costs of doing so from the undertaker.

**58.**—(1) If during the construction of a tidal work or after the completion of that work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion the undertaker, if so requested by the harbour authority acting reasonably, must remedy such accumulation or erosion to the extent attributable to such construction and, if it refuses or fails to do so as soon as reasonably practicable, the harbour authority may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1)—

- (a) in the case of an accumulation, the remedy shall be its removal; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as the harbour authority reasonably requires.

(3) In the event that surveys, inspection, tests and sampling carried out pursuant to paragraph 63(1)(b) establish that such accumulation or erosion would have been caused in any event by factors other than construction of a tidal work, the undertaker shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction.

**59.** The undertaker must pay to the harbour authority the reasonable costs of—

- (a) alterations to aids to navigation (including navigation marks or lights) owned by the harbour authority;
- (b) laying down moorings or buoys; or
- (c) carrying out any dredging operations in relation to sub-paragraphs (a) and (b),

as may be necessary in consequence of the construction of a tidal work.

**60.** The undertaker must, at or near a specified work, exhibit such lights, lay down such buoys, display such navigational markings and take such other steps for preventing danger to navigation as the harbour authority may from time to time reasonably require.

**61.** The undertaker must comply with any reasonable directions issued from time to time by the harbour master with regard to the lighting of a specified work or the screening of such lighting so as to ensure that it is not a hazard to navigation in Lowestoft Harbour.

**62.—(1)** If any tidal work of which the undertaker is in possession in exercise of any of the powers conferred by this Order is abandoned or falls into decay, insofar as it affects or otherwise impacts upon the operation of Lowestoft Harbour or navigation in the approaches to Lowestoft Harbour, the harbour authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the harbour authority may reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation, the harbour authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the undertaker so elects, to remove the tidal work and (to such extent as the harbour authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning to take such steps has failed to make reasonably expeditious progress towards effecting compliance with the requirements of the notice, the harbour authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

(4) This paragraph does not apply where any work is being managed and operated in accordance with any approval given by the harbour authority.

(5) In the event of a difference or dispute between the undertaker and the harbour authority as to the necessity of any steps or works specified in a notice by the harbour authority under this paragraph, such difference or dispute shall be determined by arbitration in accordance with article 60 (arbitration).

**63.—(1)** Without limiting the other provisions of this Part, the undertaker is to be responsible for, and must make good to the harbour authority, all losses, costs, charges, damages and expenses however caused which may reasonably be incurred by or occasioned to the harbour authority by reason of or arising from or in connection with—

- (a) the perusal of plans and navigation schemes and the inspection of a specified work by the harbour authority or its duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within Lowestoft Harbour and the approaches to Lowestoft Harbour—
  - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of Lowestoft Harbour as the harbour authority has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the undertaker is liable to remedy under paragraph 58; and
  - (ii) where the harbour authority has reasonable cause to believe that the construction of any of the tidal works is causing or has caused any such accumulation or erosion;

- (c) any update of the navigation risk assessment relating to the whole of Lowestoft Harbour to the extent that it is required as a result of any updated navigation risk assessment approved by the harbour authority under Requirement 11(3) or 11(5);
- (d) the construction, maintenance or failure of a specified work, or the undertaking by the harbour authority of works or measures to prevent or remedy danger or impediment to navigation, or damage to port land arising from such construction, maintenance or failure, including but not limited to—
  - (i) any additional costs of dredging incurred by the harbour authority as a result of contamination of the lakebed caused by the construction or maintenance of the specified work;
  - (ii) damage to any plant or equipment belonging to the harbour authority and located on port land, or to any port land or building on port land, that is caused by the construction, maintenance or failure of a specified work; and
  - (iii) the failure of the opening mechanism of the new bridge; and
- (e) any act or omission of the undertaker or its servants or agents whilst engaged in the construction or maintenance of a specified work or in the act of operating the opening mechanism of the new bridge, save where such acts or omissions are undertaken by the harbour authority.

(2) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify the harbour authority from and against all claims and demands arising out of, or in connection with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (2) are attributable to negligence on the part of the harbour authority or of any person in its employ or of its contractors or agents, including negligence in the course of operating the opening mechanism of the new bridge.

(4) The harbour authority must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.

**64.** The fact that any work or thing has been executed or done with the consent of the harbour authority and in accordance with any conditions or restrictions prescribed by the harbour authority or in accordance with any plans approved or deemed to be approved by the harbour authority or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under the provisions of this Part.

**65.** Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the harbour authority or the harbour master at the date of this Order coming into force.

**66.** With the exception of any duty owed by the harbour authority to the undertaker, nothing in this Order is to be construed as imposing upon the harbour authority any duty or liability to which the harbour authority would not otherwise be subject.

**67.** Any difference or dispute arising under this Part shall, unless otherwise agreed in writing between the undertaker and the harbour authority, be determined by arbitration in accordance with article 60 (arbitration).

## PART 6

### FOR THE PROTECTION OF ANGLIAN WATER

**68.** The following provisions of this Part of this Schedule have effect for the protection of Anglian Water unless otherwise agreed in writing between the undertaker and Anglian Water.

**69.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991; and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes sections, drawings, specifications and method statements.

**70.** The undertaker must not interfere with, build over or near to any apparatus within the Order land or carry out the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or carry out any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus—

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres,

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

**71.** The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016<sup>(a)</sup> or other legislation and any other associated consents are obtained by the undertaker, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be carried out only in accordance with the plan and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

**72.** In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, an alteration or extension must not take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

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(a) S.I. 2016/1154.

73. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement with Anglian Water, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 60 (arbitration).

74. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

75. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets must immediately be given to Anglian Water and afforded the same protection as other Anglian Water assets.

76. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 71 to 73 and 75 above any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water.

## PART 7

### FOR THE PROTECTION OF CADENT GAS LIMITED

#### Application

77. The provisions of this Part of this Schedule have effect for the protection of Cadent, unless otherwise agreed in writing between the undertaker and Cadent.

#### Interpretation

78. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by Cadent for the purposes of gas supply; together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 of this Order save that for the purposes only of this Part of this Schedule operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, remedial work in respect of any



contamination or other adverse ground conditions and receipt and erection of construction plant and equipment are to be included within the meaning of commence and the term “commencement” is to be construed to have the same meaning;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for Cadent's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including construct, use, repair, alter, inspect, renew or remove the apparatus

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be constructed;

“specified works” means any part of the authorised development which—

(a) is or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 83(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 83(2) or otherwise; and/or

(c) includes any activity that is referred to in paragraph 8 of T/SP/SSW/22 (Cadent's policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

### **On Street Apparatus**

**79.**—(1) Except for paragraphs 80, 83, 84 and 85 (retained apparatus: protection), in so far as sub-paragraph(2) applies, 86 and 87 of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs 83 and 84 of this Part of this Schedule apply to diversions even if the 1991 Act is applicable, in circumstances where any apparatus is diverted from its current alignment, but is not wholly replaced within the adopted public highway

### **Apparatus of Cadent in stopped up streets**

**80.**—(1) Without prejudice to the generality of any other protection afforded to Cadent elsewhere in the Order, where any street is stopped up under article 10 (permanent stopping up of streets and private means of access), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or must procure the granting to the Cadent of,

legal easements reasonably satisfactory to the specified Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary stopping up and restriction of use of streets), an Cadent is at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

(3) The provisions of this Part of this Schedule apply and take precedence over article 35 (apparatus and rights of statutory undertakers in stopped up streets).

### **Protective works to buildings**

**81.** The undertaker, in the case of the powers conferred by article 16 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent.

### **Acquisition of land**

**82.—**(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker may not acquire any land interest, right or apparatus or override any easement and/or other interest of Cadent by creation of restrictive covenants or otherwise nor appropriate or use the subsoil of a street which contains the apparatus of Cadent otherwise than by agreement.

(2) Prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that causes any conflict with or breach the terms of any existing easement and/or other legal or land interest of Cadent and/or affects the provisions of any existing enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it must be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such part of the authorised development.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this part of this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 85 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**83.—**(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Cadent in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of constructing any part of the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Cadent to its satisfaction (taking into account paragraph 84(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such reasonable steps to seek to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, with the promotor's assistance if required by Cadent, save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to Cadent of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

#### **Facilities and rights for alternative apparatus**

**84.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be removed the terms and conditions to which those facilities and rights are subject in the matter may be referred by Cadent to arbitration in accordance with paragraph 91 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection**

**85.**—(1) Not less than 56 days (or such time period as may be agreed between Cadent and the undertaker) before the commencement of any specified works the undertaker must submit to Cadent a plan or plans and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan or plans to be submitted to Cadent under sub-paragraph (1) must include a method statement which describes—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;

- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs 1 and (2) apply until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by Cadent for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any the authorised development (or any relevant part thereof) for which protective works are required and Cadent must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If Cadent in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 83(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days unless otherwise agreed by Cadent and the undertaker before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any part of the authorised development Cadent must comply with Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event, identified in the light of monitoring required in sub-paragraph (1) or which otherwise becomes apparent, attributable to the authorised development the undertaker must implement an appropriate ground mitigation

scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 8.

## Expenses

**86.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on reasonable demand all charges, costs and expenses reasonably anticipated or incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any alternative apparatus which may be required in consequence of the execution of any part of the authorised development as is referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for alternative apparatus including without limitation all costs incurred by Cadent as a consequence of Cadent:
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 83(3); and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (arbitration) to be necessary, then, if such placing involves cost in the construction of works to apparatus or alternative apparatus under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth due either to unavailability of a like for like replacement or as a result of changes in policy or regulations rendering the original apparatus inappropriate, unacceptable or obsolete in which case full costs are to be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of the existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus,
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount that represents that benefit.

## **Indemnity**

**87.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works to apparatus or alternative apparatus authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any omission, negligence or default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision must not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any of the authorised development and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of Cadent with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the Planning Act 2008 or article 48 (transfer of benefit of order, etc.) subject to the proviso that once such works become apparatus (“new apparatus”), any of the authorised development yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 87.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

**88.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**89.**—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or an Cadent requires the removal of apparatus under paragraph 83(2) or an Cadent makes requirements for the protection or alteration of apparatus under paragraph 85, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent’s undertaking and each Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

**90.** If in consequence of the agreement reached in accordance with paragraph 82(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction

### **Arbitration**

**91.** Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 60 (arbitration).

DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Description</i>
book of reference	The book of reference contained in document reference [SCC/LLTC/EX/116].
classification of roads plan	The classification of roads plan revision number P01 contained in document reference [SCC/LLTC/EX/136].
drainage strategy	The drainage strategy contained in document reference [SCC/LLTC/EX/168].
engineering section drawings and plans	<p>The engineering section drawings and plans revision number P0 contained in document reference 2.9 subject to the substitutions set out below:</p> <ul style="list-style-type: none"> <li>(a) Key Plan revision number P01 contained in document reference [SCC/LLTC/EX/140];</li> <li>(b) Mainline Key Plan revision number P01 contained in document reference [SCC/LLTC/EX/141];</li> <li>(c) Mainline Sheet 1 revision number P01 contained in document reference [SCC/LLTC/EX/142];</li> <li>(d) Mainline Sheet 2 revision number P02 contained in document reference [SCC/LLTC/EX/143];</li> <li>(e) Side Roads Key Plan revision number P01 contained in document reference [SCC/LLTC/EX/144];</li> <li>(f) Side Roads Sheet 5 revision number P01 contained in document reference [SCC/LLTC/EX/145];</li> <li>(g) Side Roads Sheet 6 revision number P01 contained in document reference [SCC/LLTC/EX/146];</li> <li>(h) Side Roads Sheet 7 revision number P01 contained in document reference [SCC/LLTC/EX/147];</li> <li>(i) Side Roads Sheet 8 revision number P01 contained in document reference [SCC/LLTC/EX/148]; and</li> <li>(j) Side Roads Sheet 9 revision number P01 contained in document reference [SCC/LLTC/EX/149].</li> </ul>
environmental statement	The environmental statement, figures and appendices contained in document references 6.1, 6.2 and 6.3 (subject to the substitutions set out below):



	<ul style="list-style-type: none"> <li>(k) Chapter 11 of the Environmental Statement contained in document reference [SCC/LLTC/EX/69];</li> <li>(l) Chapter 12 of the Environmental Statement contained in document reference [SCC/LLTC/EX/86];</li> <li>(m) the interim code of construction practice (appendix 5A);</li> <li>(n) the scheme-wide written scheme of investigation;</li> <li>(o) the ground investigation report;</li> <li>(p) the piling works risk assessment;</li> <li>(q) the sediment transport assessment (appendix 17C) contained in document reference [SCC/LLTC/EX/36];</li> <li>(r) Annex A to the flood risk assessment (appendix 18A) contained in document reference [SCC/LLTC/EX/47];</li> <li>(s) Annex C figures 3.1 and 6.1 to the flood risk assessment (Appendix 18A) contained in document reference [SCC/LLTC/EX/167];</li> <li>(t) the drainage strategy; and</li> <li>(u) the following figures: <ul style="list-style-type: none"> <li>(i) 1.2 contained in document reference [SCC/LLTC/EX/155];</li> <li>(ii) 4.1 and 4.3 contained in document reference [SCC/LLTC/EX/156];</li> <li>(iii) 5.1 to 5.5 contained in document reference [SCC/LLTC/EX/157];</li> <li>(iv) 8.2 contained in document reference [SCC/LLTC/EX/158];</li> <li>(v) 9.1, 9.3 and 9.4 contained in document reference [SCC/LLTC/EX/159];</li> <li>(vi) 11.3 and 11.6 contained in document reference [SCC/LLTC/EX/160];</li> <li>(vii) 12.1 contained in document reference [SCC/LLTC/EX/161];</li> <li>(viii) 13.1 contained in document reference [SCC/LLTC/EX/162];</li> <li>(ix) 15.2 contained in contained in document reference [SCC/LLTC/EX/163];</li> <li>(x) 17.1, 17.2 and 17.3 contained in document reference [SCC/LLTC/EX/164];</li> </ul> </li> </ul>
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	<p>(xi) 18.1 and 18.2 contained in document reference [SCC/LLTC/EX/165]; and</p> <p>(xii) 19.2 and 19.3 contained in document reference [SCC/LLTC/EX/166].</p>
general arrangement plans	<p>The general arrangement plans contained in the following documents:</p> <p>(v) Key Plan revision number P01 contained in document reference [SCC/LLTC/EX/121];</p> <p>(w) Sheet 1 revision number P02 contained in document reference [SCC/LLTC/EX/122]; and</p> <p>(x) Sheet 2 revision number P01 contained in document reference [SCC/LLTC/123].</p>
ground investigation report	<p>The interpretative environmental ground investigation report contained in document reference [SCC/LLTC/EX/32].</p>
harbour limits plan	<p>The harbour limits plan revision number P01 contained in document reference [SCC/LLTC/EX/153].</p>
highway lighting plan	<p>The highway lighting plan contained at Figure 5.5 of the environmental statement.</p>
interim code of construction practice	<p>The interim code of construction practice contained in document reference [SCC/LLTC/EX/61].</p>
interim design guidance manual	<p>The design guidance manual contained in document reference [SCC/LLTC/EX/17].</p>
land plans	<p>The land plans revision number P0 contained in document reference 2.3 subject to the substitutions set out below:</p> <p>(y) Sheet 3 revision number P01 contained in document reference number [SCC/LLTC/EX/124];</p> <p>(z) Sheet 4 revision number P01 contained in document reference number [SCC/LLTC/EX/125]; and</p> <p>(aa) Sheet 5 revision number P01 contained in document reference number [SCC/LLTC/EX/126].</p>
landscaping plans	<p>The landscaping plans contained in the following documents:</p> <p>(bb) Key Plan revision number P02 contained in document reference [SCC/LLTC/EX/137];</p> <p>(cc) Sheet 1 revision number P02 contained in document reference [SCC/LLTC/EX/138]; and</p> <p>(dd) Sheet 2 revision number P02 contained in document reference [SCC/LLTC/123].</p>

limits of dredging plan	The limits of dredging plan revision number P01 contained in document reference [SCC/LLTC/EX/150].
new bridge area plans	The new bridge area plans revision number P0 contained in document reference 2.13 subject to the substitutions set out below:  (ee) Key Plan version number P01 contained in document reference [SCC/LLTC/EX/151]; and  (ff) Sheet 2 revision number P01 contained in document reference [SCC/LLTC/EX/152].
new bridge operating signals noise assessment	The new bridge operating signals noise assessment contained in appendix A to document reference [SCC/LLTC/EX/81].
piling works risk assessment	The piling works risk assessment revision 1 contained in document reference [SCC/LLTC/EX/34].
preliminary navigation risk assessment	The preliminary navigation risk assessment contained in document reference 6.9 subject to the substitution of the vessel survey report (appendix B) which is substituted by the vessel survey report contained in document reference [SCC/LLTC/EX/44].
scheme of operation	The Scheme of Operation contained in document reference [SCC/LLTC/EX/41].
rights of way and access plans	The rights of way and access plans contained in the following documents:  (gg) Key Plan revision number P01 contained in document reference [SCC/LLTC/EX/129];  (hh) Sheet 1 revision number P01 contained in document reference [SCC/LLTC/EX/130]; and  (ii) Sheet 2 revision number P01 contained in document reference [SCC/LLTC/EX/131].
scheme-wide written scheme of investigation	The scheme-wide written scheme of investigation contained in document reference [SCC/LLTC/EX/67].
transport assessment	The transport assessment contained in document reference [SCC/LLTC/EX/23]
traffic regulation measures plans	The traffic regulation measures plans revision number P0 contained in document reference 2.6 subject to the substitutions set out below:  (jj) Key Plan version number P01 contained in document reference [SCC/LLTC/EX/132];  (kk) Clearways and Prohibitions Sheet 1 revision number P01 contained in document reference [SCC/LLTC/EX/133];



## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Suffolk County Council to construct, operate and maintain the Lake Lothing Third Crossing. This is a lifting bridge which would open to allow tall vessels to pass through Lake Lothing. It would connect the areas to the north and south of Lake Lothing and would be located between the existing bascule bridge carrying the A47 and the existing Mutford Lock bridge.

The Order would permit Suffolk County Council to acquire, compulsorily or by agreement, land and rights over land and to use land temporarily for purposes in connection with the authorised development.

The Order also includes provisions in relation to the operation of the new lifting bridge and in relation to tidal works.

A copy of all documents referred to in this Order and certified in accordance with article 58 of this Order (certification of documents) may be inspected free of charge during working hours at the offices of Suffolk County Council, Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX and at Riverside, 4 Canning Road, Lowestoft, Suffolk NR33 0EQ.

**201[ ] No.**

**INFRASTRUCTURE PLANNING**

The Lake Lothing (Lowestoft) Third Crossing Order 201[\*]

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