

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



Lake Lothing
**THIRD
CROSSING**

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Planning Act 2008

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

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INFRASTRUCTURE PLANNING

PLANNING ACT 2008

**THE INFRASTRUCTURE PLANNING
(APPLICATIONS: PRESCRIBED FORMS
AND PROCEDURE) REGULATIONS 2009**

**LAKE LOTHING (LOWESTOFT) THIRD
CROSSING ORDER 201[*]**

EXPLANATORY MEMORANDUM

TO ACCOMPANY

APPLICATION VERSION OF DRAFT ORDER

(JUNE 2019)

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1. **SUMMARY**

- 1.1 This memorandum explains the purpose and effect of each article of, and Schedule to, the draft Lake Lothing (Lowestoft) Third Crossing Order (“the Order”), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹.

2. **PURPOSE OF ORDER**

- 2.1 Suffolk County Council (referred to as “the undertaker” in the Order and in this document) is applying to the Secretary of State for Transport for an Order to authorise the construction, operation and maintenance of the Lake Lothing Third Crossing (“the Scheme”).
- 2.2 The Scheme comprises the construction of a new multi-span lifting bridge to provide a new highway crossing of Lake Lothing, Lowestoft, connecting Riverside Road to the south of Lake Lothing with Peto Way to the north of Lake Lothing; with associated connections into the existing highway network and the provision of new local access roads in the vicinity.
- 2.3 The main benefits of the Scheme derive from the provision of additional north-south connectivity within Lowestoft. Congestion in Lowestoft throughout the day has the dual effect of reducing accessibility to key areas of the town, in particular redevelopment sites around Lake Lothing, while significantly delaying traffic on the Strategic Road Network, which this Scheme will seek to relieve by providing an alternative crossing point, reducing congestion on the existing bascule bridge carrying the A47.
- 2.4 On 22 March 2016 the Secretary of State for Transport gave a direction under section 35 of the Planning Act 2008 (“the Act”) that the proposed Lake Lothing Third Crossing, as well as any associated matters, be treated as development for which development consent is required.
- 2.5 As a result of this, development consent must be obtained from the Secretary of State to authorise the Scheme, and an application for a development consent order (“DCO”) must be made to the Secretary of State, care of the Planning Inspectorate (“PINS”), under section 37 of the Act.

SUPPLEMENTAL POWERS

- 2.6 The Order also contains provision for a wide range of powers to support the Scheme.

¹ S.I. 2009/2264

- 2.7 It seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. It is for this reason that under sections 117 and 120(5) of the Act the Order is made by Statutory Instrument.
- 2.8 The Order includes provisions relating to the integration of the Scheme, once operational, with the operational regimes of the existing bascule bridge and the existing port, which is known generally as the Port of Lowestoft, and which is referred to in the Order and in this document as “Lowestoft Harbour”.
- 2.9 Other powers for which the Order makes provision include the diversion and stopping up of lengths of existing highways in the vicinity of the new bridge, the designation and redesignation of highways classifications, the application of speed limits and other traffic regulation measures, the stopping up of private means of access and the creation of new private means of access, operational provisions and the making of byelaws in respect of the new bridge and the application and disapplication of legislation relating to the Scheme.

3. **DRAFT ORDER**

- 3.1 The purpose and effect of the provisions of the Order are explained in sequence below. Whilst the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009² has lapsed, the Order is broadly based on those model provisions (general and railway), as well as precedents in DCOs and relevant Orders under the Transport and Works Act 1992 that have been made to date.
- 3.2 The provisions of the Order have been developed pursuant to section 120 of, and Schedule 5 to, the Planning Act 2008.

4. **PART 1 – PRELIMINARY**

Article 1 – Citation and Commencement

- 4.1 Article 1 sets out the name of the Order and includes a placeholder for identifying the date on which, if made, the Order would come into force.

Article 2 - Interpretation

- 4.2 The purpose of article 2(1) is to define terms used in the Order.
- 4.3 The definition of “authorised development” encompasses the development authorised by the Order and should be read in that context in this memorandum.
- 4.4 The following definitions in particular have been included due to the nature of the Scheme:

² S.I. 2009/2265

- 4.4.1 “the 1984 Act”;
- 4.4.2 “the 2009 Act”;
- 4.4.3 “appointed person”;
- 4.4.4 “carriageway”; and
- 4.4.5 “the Harbour Authority”.
- 4.5 Other definitions to note include:
 - 4.5.1 “commence” which makes clear that a number of works that would constitute a "material operation" under the Town and Country Planning Act 1990 do not mean that the authorised development has been "commenced". The effect of the definition is that certain ‘carved out’ works (including non-intrusive investigations for the purpose of assessing ground conditions) can be carried out prior to the discharge of the requirements contained in Schedule 2 to the DCO. This is of critical importance to the undertaker in the context of the envisaged construction programme. It is considered that the works that are ‘carved out’ would not have any impact on the effectiveness of the requirements from an environmental protection perspective. The undertaker is particularly keen to draw the Examining Authority’s attention to the importance of retaining this definition in the context of the definition of ‘commence’ deleted by the Secretary of State when the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015 was made. Highways England (the promoter of that scheme) drew the Secretary of State’s attention to the consequences of this and a Correction Order was made, amending some of the requirements, and it was recognised by the Secretary of State in the Correction Notice that the deletion of the definition of “commence” had *‘the unintended consequence of removing an acceptable degree of flexibility in the implementation of the project and that this is a correctable error for the purposes of Schedule 4 to the Planning Act 2008’*;
 - 4.5.2 “maintain” which includes the power to “inspect, repair, adjust, alter, remove, replace or reconstruct”. The undertaker considers this is entirely appropriate and has precedent in made DCOs to date, such as the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 and, indeed, does not go as far as other DCOs such as the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015 and Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. In the context of the Scheme, given in particular that the new bridge involves many moving parts, it is important for the undertaker to be able to undertake all the elements of maintenance that are included within this definition.
 - 4.5.3 “the Order land” refers to land which is coloured pink and blue on the land plans (including land which is hatched pink and blue), and which,

respectively, comprises the land which the undertaker can permanently acquire (pink land), and the land over which the undertaker can permanently acquire new rights (blue land). Land which is hatched pink and blue on the land plans denotes land in respect of which the undertaker seeks a power to acquire airspace (pink) to accommodate the bridge deck, and rights below (blue), for the protection and maintenance of the bridge structure.

- 4.5.4 “the Order limits” references the Order limits as shown on the works plans and the land plans – identifying the extent of the area within which the authorised development may be carried out;
- 4.5.5 “the new bridge” is defined by reference to specific Work numbers in Schedule 1, and is, along with “the new bridge approaches”, identified on “the new bridge area plans”, as the Order imposes certain powers and controls in relation to both of these parts of the authorised development and in relation to the area surrounding them; and
- 4.5.6 “the Scheme of Operation” which relates to a document to be certified pursuant to article 63 of the Order that will set out the requirements for how the new bridge will be operated.
- 4.6 Article 2(2) expands the definition of rights over land and clarifies the purpose of the power within the Order to impose restrictive covenants.
- 4.7 Article 2(3) defines measurements as approximate. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the works are permitted by the Order. The provision allows for a small tolerance with respect to any distances and points, although all works are to take place within the limits of deviation where these apply, and within the Order limits in any event. It is commonplace to include such provision in legislation authorising linear infrastructure – see, for example, the M1 Junction 10a (Grade Separation) Order 2013 at article 2(3), the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 at article 2(3) and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 at article 2(3).
- 4.8 Article 2(4) provides that areas given in the book of reference, in relation to plot numbers, are approximate, since these are not covered by article 2(4). This is intended to clarify the status of the area measurements in the book of reference, and the purpose and effect of the term ‘approximately’ in this context is the same as set out in the previous paragraph. The term ‘approximately’ is used before all plot area measurements in the book of reference, as these measurements are given in square metres, and each measurement is rounded up to the nearest whole square metre. Such approximation relates only to land within the limits of land already identified within the Order (i.e. to land within the Order limits).

4.9 Article 2(5)-(6) ties references to lettered/numbered plots and reference points and numbered works in the Order to the relevant plans.

5. **PART 2 – WORKS PROVISIONS - PRINCIPAL POWERS**

Article 3 – disapplication of legislation etc.

5.1 This article provides (in reliance on section 120(5)(a) of the Act (what may be included in order granting development consent)) for the disapplication of certain requirements which would otherwise apply under public general legislation, as well local legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order.

5.2 In particular, article 3(1)(a) seeks to disapply one of the Lowestoft Harbour Byelaws 1993 to ensure that the Applicant is not controlled by a byelaw that would impose restrictions on its construction or maintenance methodologies.

5.3 Article 3(3) has been included in the Order due to the existence of a planning condition attaching to land adjacent to the premises of Essex and Suffolk Water, and which is included within the Order limits for the Scheme. As a condition of the planning permission for that building, Essex and Suffolk Water was required to deliver and maintain a biodiversity area. The Scheme will utilise this area during construction, and only half of it will be returned to its ecological use following the construction of the Scheme. This drafting therefore seeks to release Essex and Suffolk Water from the obligation to comply with that condition, once the land in question has been deployed for the purposes of the Scheme.

Consents

5.4 The article also provides for the disapplication of various additional consents or permits during construction and the maintenance period (as defined in article 35), which would otherwise be required.

5.5 Article 3(1)(b) to (e) provides for the disapplication of consents ordinarily required from the Environment Agency, under the Environmental Permitting (England and Wales) Regulations 2016 (“the EP Regulations”) and the Water Resources Act 1991³, and the local lead flood authority in respect of the Land Drainage Act 1991.

5.6 Specifically, these are the requirements for consents in respect of a ‘flood risk activity’ under the EP Regulations, and for abstractions, together with the requirements for approval under flood defence byelaws made, or deemed to have been made, under the Water

³ Certain ‘flood risk’ consents that were required to be obtained under the Water Resources Act 1991 have only recently been removed and brought under the scope of the Environmental Permitting regime.

Resources Act 1991. These are consents for activities which may be a necessary part of constructing the authorised development. To provide certainty that the Scheme can proceed, the Order disapplies the requirement for a separate statutory consent to be obtained from the Environment Agency in relation to these activities. The requirement for a separate consent will be replaced by protective provisions for the protection of the Environment Agency in Schedule 13 which will require certain works which could affect flood defences to be approved by the Environment Agency before they are carried out.

- 5.7 In accordance with section 150 of the Act, the consent of the Environment Agency and of the lead local flood authority to the inclusion of these provisions in the Order will be required and accordingly, the consent of these “relevant bodies” (for the purposes of section 15 of the Act) has been obtained.
- 5.8 A disapplication is also sought in respect of the temporary possession provisions of the Neighbourhood Planning Act 2017. This is required as the subsidiary regulations to that Act have not yet been made, and there is therefore no certainty as to the requirements of the new temporary possession regime. As such, this enables the temporary possession regime created by this Order to be applied. This approach has recently been accepted by the Secretary of State in the Silvertown Tunnel Order 2018.

CIL Regulations

- 5.9 Article 3(2) in effect disapplies the Community Infrastructure Levy Regulations 2010, by making clear that any building comprised in the authorised development is to be deemed to be of a type that does not trigger liability for payment of the Community Infrastructure Levy.

Article 4 – Development consent granted by the Order

- 5.10 Article 4 confers the principal power to construct the authorised development – the development consent. Schedule 1 describes the component elements of the authorised development.
- 5.11 Article 4(1) grants development consent to the undertaker to carry out the authorised development.
- 5.12 Paragraph (2) has precedent in previous DCOs such as the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 and the Silvertown Tunnel Order 2018. It is required to ensure that other schemes or legislation that could have a bearing on the Scheme have to take account of the Order.
- 5.13 Development consent is subject in particular to the requirements set out in Schedule 2 to the Order.

Article 5 - Limits of deviation

- 5.14 The authorised development involves linear and non-linear works. Linear works are shown on the works plans by way of a centre line (shown as a green dashed line). The areas within which non-linear works are to be delivered are also shown on the works plans, edged with a solid green line. Article 5 provides for limits of deviation both laterally (by reference to the lines and centre lines shown on the works plans) and vertically (by reference to the levels shown on the engineering section drawings and plans).
- 5.15 The purpose of this article is to provide the undertaker with a necessary but proportionate degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for reasons which, at the time the application was made and the development consent was granted, could not reasonably have been foreseen.
- 5.16 In addition, the article is drafted in terms which protect and preserve both the existing width of the navigable channel (a width of 32 metres is proposed to be safeguarded) and the height of the proposed air draught beneath the opening section of the bridge (that height being no less than 12 metres above Highest Astronomical Tide).
- 5.17 The limits of deviation set out in article 5 have been developed through the design and EIA process for the Scheme; as such the article is an adaptation of the article set out in the Model Provisions, and in terms of principle, it accords with the majority of DCOs made to date.

6. **PART 2 – WORKS PROVISIONS - STREETS**

Article 6 - Street works

- 6.1 This article would confer authority on the undertaker to interfere with and execute works in or under any streets for the purposes of the authorised development. The exercise of this power is subject to the consent of the street authority. The wording of the article is, in the main, preceded in the Silvertown Tunnel Order 2018.
- 6.2 Whilst widely drafted, the broad scope of this article is considered necessary in light of the early design stage the Scheme is at – maximum construction flexibility is required. This is particularly the case with the diversion of apparatus, for which the powers in this article would most frequently be used, as on-going negotiations with statutory undertakers may mean that streets outwith the Order limits are required to be affected to facilitate the relocation of statutory undertakers' apparatus.
- 6.3 The authority given by this article is a statutory right for the purposes of the 1991 Act.
- 6.4 *Article 7 – Application of the 1991 Act*

- 6.5 Article 7 provides for the application of the 1991 Act. There is precedent for these provisions in respect of other major schemes, e.g. the Nottingham Express Transit System Order 2009, the M1 Junction 10a (Grade Separation) Order 2013, the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016.
- 6.6 Paragraphs (1) and (2) provide that certain works carried out under the authority of the Order are to be "major highway works" for the purposes of the 1991 Act. The effect of this is to clarify that the cost-sharing provisions relevant to the diversion of utility apparatus (which would apply to such works under the 1991 Act if carried out by the highway authority) will apply in respect of the works authorised by the Order, irrespective of who, in fact, carries them out.
- 6.7 Paragraph (3) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order (particularly article 4 and Schedule 1), and the specific provisions in the Order which would regulate the carrying out of the Order works.
- 6.8 Paragraphs (4) to (6) apply certain provisions of the 1991 Act (listed in paragraph (5)) to streets which are to be temporarily stopped up under the Order. This is for two reasons: first, it prevents any confusion as to whether works in respect of a temporarily stopped-up street are "street works" for the purposes of the 1991 Act; and secondly, it simplifies the implementation of the works by providing for a single process in respect of streets which are stopped up and those which are not.
- 6.9 Paragraph (7)(a) provides that nothing in article 8 of the Order (which provides that the streets constructed, altered or diverted under the Order are to be maintained by the highway authority) affects the ability of the local highway authority (under s.87 of the 1991 Act) to apply Part 3 of the 1991 Act to such streets in advance of those streets becoming publicly maintainable. Paragraph (7)(b) limits the operation of article 9 to off-street works.

Article 8 – Construction and maintenance of new, altered or diverted streets

- 6.10 The purpose and effect of article 8 (precedented, for example, in the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016) is as follows:
- 6.10.1 Suffolk County Council in its role as local highway authority will be the street authority for the public highways and the structure on which they sit constructed pursuant to this Order. For any other streets

constructed, altered or diverted, paragraphs (1), (2), (3) and (4) specify the body that will be liable for maintenance, namely the street authority, and that the streets in Schedule 4 shall become public highway.

- 6.10.2 The effect of paragraphs (5) and (6) is that in any action for damages against the undertaker alleging failure to maintain a street, the undertaker will have the defence that it had taken such care as was reasonably required in the circumstances to secure that the street was not dangerous for traffic.

Article 9 – Classification of Roads

- 6.11 This article provides for the classification of new public highways created by the Scheme, and, where necessary, the reclassification of existing highways. The exact classifications proposed are set out in Schedule 3 to the DCO. It is preceded in many highways schemes, such as the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016.

Article 10 – Permanent stopping up of streets and private means of access

- 6.12 This article provides for the streets identified in Parts 1 and 2 of Schedule 4 and the private means of access identified in parts 3 and 4 of Schedule 4 to be stopped up (i.e. it provides for the public right of way along those streets, or the private rights of way over those accesses, to be extinguished). It is preceded in many highways schemes, such as the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016.
- 6.13 For the streets and private means of access to be stopped up as specified in Parts 1 and 3 of the Schedule respectively, a substitute street or private means of access is to be provided. The existing street or private means of access cannot be stopped up until either the street authority is satisfied that the new street or private means of access is fit for purpose, or a temporary street or private means of access is made available while the existing is stopped up and before the new street or private means of access is ready.
- 6.14 For the streets or private means of access to be stopped up as specified in Parts 2 and 4 of the Schedule, no substitute street or private means of access is to be provided. Such a street or private means of access may not be stopped up unless the conditions referred to in paragraph (4) of article 11 are met in relation to all the land which abuts either side of the street to be stopped up.
- 6.15 Paragraph (6) of article 10 makes clear that site notices must be erected before certain rights of way are stopped up and the rights of way are extinguished.

- 6.16 Appendix C to the Statement of Reasons (document reference [4.1] (revision 0)) sets out the rationale for permanently stopping up (and replacing where relevant) rights of way and private means of access.

Article 11 – Temporary stopping up and restriction of use of streets

- 6.17 This article allows for the temporary stopping up, alteration or diversion of streets for the purposes of the authorised development, whilst ensuring that pedestrian access is provided. The power is drafted widely due to the early design stage the Scheme is at - maximum construction flexibility is required. This is particularly the case with the diversion of statutory undertakers' apparatus, for which the powers in this article would most frequently be used, as on-going negotiations with statutory undertakers may mean that streets outwith the Order limits are required for the relocation of apparatus.
- 6.18 Paragraph (2) confers a power on the undertaker where the use of a street has been temporarily stopped up under this article to use it as a temporary working site. This provision has precedent in recent orders made under the Transport and Works Act 1992 and the Act; for example the Network Rail (North Doncaster Chord) Order 2012, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013, the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016.
- 6.19 In the context of the breadth of the power, it is important to note that the consent of the street authority is required where Suffolk County Council is not the street authority (for example Associated British Ports in respect of harbour roads such as Commercial Road).

Article 12 – Access to works

- 6.20 This article allows works accesses to public highways to be created. It gives the undertaker a general power to form means of access with the consent of the street authority. Originally envisaged by the Model Provisions, this wording has been used in Orders such as the Northumberland County Council (A1-South East Northumberland Link Road (Morpeth Northern Bypass) Development Consent Order 2015 and the Silvertown Tunnel Order 2018.

Article 13 – Agreements with street authorities

- 6.21 This article allows a street authority and the undertaker to enter into agreements with respect to the construction of new streets, the strengthening, improvement or maintenance of streets, the stopping up, alteration or diversion of streets, the execution of any street works as listed in article 7 and Schedule 1 and any other works which the parties may agree.

- 6.22 Such agreement would provide the street authority with the power to carry out any function under the Order which relates to the street in question. The agreement may set out a reasonable time for completion of the works, provide for the dedication of any new street as public highway and contain terms as to payment and otherwise as the parties consider appropriate.
- 6.23 This drafting is an adaptation of the Model Provisions, to fit with the circumstances of the Scheme.

Article 14 – Use of private roads for construction

- 6.24 This article authorises the temporary passage of persons or vehicles along private roads situated within the Order limits for the purpose of, or in connection with, the construction of the authorised development without the necessity for the undertaker to acquire an easement over that land. Provision is made for compensation.
- 6.25 This provision is required to enable the construction of the Scheme to take place in the context of the private roads that exist within Lowestoft Harbour; it is preceded in the Silvertown Tunnel Order 2018.

PART 2 – WORKS PROVISIONS – SUPPLEMENTAL POWERS

Article 15 – Discharge of water

- 6.26 This article sets out the circumstances in which the undertaker is entitled to discharge water into a sewer, watercourse or drain, and its purpose is to establish statutory authority for doing so.
- 6.27 The effect of article 15 is that discharge can only be effected with the consent of the owner of the sewer, watercourse or drain into which water is being discharged, but such consent must not be unreasonably withheld. No additional protection is required for statutory undertakers in this article, as they have relevant controls in their protective provisions.
- 6.28 Paragraph (6) makes clear that this article does not obviate the need for an environmental permit for such discharge where this is relevant.
- 6.29 This article is preceded in many DCOs, including, for example, the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016.

Article 16 – Protective works to buildings

- 6.30 The purpose of this article (which is included in the Model Provisions and the majority of made DCOs to date) is to allow the undertaker to undertake protective works such as underpinning to buildings affected by the authorised development and to set out the procedure that will apply in those circumstances.

- 6.31 Paragraph (3)(b) provides that the undertaker is authorised to enter and survey (and monitor) land lying outside the Order limits but which is adjacent to a building (or the curtilage of a building) in respect of which the undertaker has the power to undertake protective works, should it be necessary or expedient. This is because certain buildings that may require protective works are on the edge of the Order limits, and it is considered necessary to include the power to be able to access land to undertake survey and monitoring work outside of the Order limits on land adjacent to these buildings to ensure sufficient access, should it be necessary.
- 6.32 Paragraph (4) provides the undertaker with a power to take possession, or to take exclusive possession, where reasonably required, for the purpose of carrying out protective works.
- 6.33 Paragraph (11) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused.

Article 17 – Authority to survey and investigate land

- 6.34 This article gives the undertaker the power to enter certain land (both in and outside the Order limits, for similar reasons as presented for article 16) for the purpose of surveying and testing. It provides that the undertaker must give 14 days' notice before exercising the power of entry, and that compensation is payable for any loss or damage caused.
- 6.35 Paragraph (6) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused.
- 6.36 Paragraphs (1) to (5) are included in the Model Provisions and the majority of made DCOs to date. Paragraphs (6) and (7) are preceded in the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 and the Silvertown Tunnel Order 2018.

Article 18 – Felling or lopping of trees

- 6.37 This article allows any tree or shrub that is overhanging the authorised development to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the authorised development or endanger anyone using it. Compensation is payable for any loss or damage caused.
- 6.38 This article is included in the Model Provisions and the majority of made DCOs to date.

Article 19 – Trees subject to tree preservation orders

6.39 Article 19 (which is included in the Model Provisions) is in similar terms to the previous article (18 – Felling or lopping of trees) but provides for the felling or lopping of trees that are protected by tree preservation orders, as listed in Schedule 5, if reasonably necessary for the purposes of the authorised development. The permission granted by the article constitutes deemed consent under a tree preservation order. The protected trees which will be affected by the scheme are those present in the locations specified in Schedule 5 and shown on the tree preservation order trees location plan.

Article 20 - Temporary suspension of navigation within Lake Lothing in connection with the authorised development

6.40 This article provides for the temporary suspension of navigation within the parts of Lake Lothing that are within the Order limits, if required in connection with the construction, inspection and maintenance of the authorised development, following the approval of the Harbour Authority. Such power is required to enable the undertaker to construct and maintain the new bridge in the most effective manner, and to be able to deal with urgent issues efficiently.

6.41 Paragraphs (2), (3) and (5) provide that the suspension of navigation must be effected for the minimum possible amount of time and in a way that causes the minimum amount of disruption to users of Lake Lothing, and sets out how suspensions must be publicised Paragraph (4) sets out that exceptions to the publication requirements apply in an emergency.

6.42 Paragraph (6) provides a mechanism for vessels to enter into the closed areas (e.g. for surveys) with the consent of the undertaker.

6.43 No provision is made for compensation deriving from the utilisation of this power. This is because it involves interference with a public, not a private right. The Applicant notes that the absence of such provision is reflected in the comparable articles in the Burbo Bank Extension Offshore Wind Farm Order 2014, Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, and the National Grid (Richborough Connection Project) Development Consent Order 2017.

Article 21 – Removal of vessels

6.44 This article provides for the causing of the removal of sunk, stranded or abandoned, moored or laid up vessels from Lake Lothing by the undertaker, with the consent of the Harbour Authority, if required in connection with the construction or maintenance of the authorised development.

6.45 This provision is required to prevent the undertaker's activities associated with the construction or maintenance of the new bridge from being impeded by abandoned, moored or laid up vessels. As such, it could not be a power that is retained by the harbour authority

as part of their statutory powers, to be exercised for the benefit of the undertaker only by request, as this could delay or impede the construction of a nationally significant infrastructure project.

- 6.46 Paragraphs (2) to (4) explain how such removals must be publicised, and provide that the undertaker may undertake the removal if this is not done by the vessel owner; paragraph (5) provides for the undertaker to claim the costs of doing so as a debt.
- 6.47 This article has precedent in the Borough of Poole (Poole Harbour Opening Bridges) Order 2006 and in The River Mersey (Mersey Gateway Bridge) Order 2011.

7. **PART 3 - POWERS OF ACQUISITION AND POSSESSION OF LAND – POWERS OF ACQUISITION**

Article 22 – Compulsory acquisition of land

- 7.1 This article authorises the compulsory acquisition of the Order land. It grants the undertaker the power to acquire such land as is required for the authorised development. This is subject to articles 26 (*Compulsory acquisition of rights*) and 27 (*Acquisition of subsoil and airspace only*), which are explained below.
- 7.2 The drafting of this provision broadly follows the approach taken in the Network Rail (North Doncaster Chord) Order 2012, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013, the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and the Silvertown Tunnel Order 2018.

Article 23 – Acquisition of non-Crown interests in Crown Land

- 7.3 This article is included due to the fact that Crown land consent has not yet been obtained by the Applicant in relation to the Highways England Historic Railways Estate prior to the end of Examination. It is a slightly amended version of wording suggested by the Examining Authority.

Article 24 – Compulsory acquisition of land – incorporation of the mineral code

- 7.4 By incorporating Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981, this article exempts existing rights in minerals from the scope of compulsory acquisition unless they are expressly named and conveyed. It also makes provision for a situation where the owner of mines or minerals wishes to work such mines or minerals. Such an article is included in the Model Provisions and the majority of made DCOs to date.

Article 25 – Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily

7.5 This article gives the undertaker five years to issue ‘notices to treat’ or to execute ‘general vesting declarations’ to acquire the land that is subject to the power of compulsory acquisition. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made. The article also provides that land subject to the power of temporary possession for the carrying out of the authorised development - under article 34 (*Temporary use of land for carrying out the authorised development*) - may not be occupied after the end of that same period unless the land is already being occupied by the undertaker in exercise of the powers of the Order. Such an article is included in the Model Provisions and the majority of made DCOs to date.

Article 26 – Compulsory acquisition of rights

7.6 This article allows for rights over land to be acquired as well as (or instead of) the land itself, and also for new rights to be created over land.

7.7 It provides for such rights as may be required to be acquired by the undertaker over land which it is authorised to acquire under article 22 (compulsory acquisition of land). The public benefit of this is that it would allow the undertaker, if appropriate, to reduce the area of outright acquisition and rely on the creation and acquisition of rights instead. A provision of this kind is usual in Transport and Works Act Orders and Hybrid Bills, and has been followed in a number of development consent orders, for example the Network Rail (North Doncaster Chord) Order 2012, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 and the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014.

7.8 The article provides that, for the land described in Schedule 6, the undertaker’s powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required for the purposes of the authorised development as specified in Schedule 6.

7.9 The power to impose restrictive covenants allows for the possibility of reducing the area of outright acquisition and therefore enables a more proportionate exercise of compulsory acquisition powers. It is in the public interest and has precedent in Transport and Works Act Orders⁴. It is particularly relevant in the context of Lowestoft Harbour as a working harbour. Whilst the application has sought compulsory acquisition powers over part of the Harbour to enable the construction and operation of the new bridge, it may be that restrictive covenants to restrict use may be able to be imposed as the design of the Scheme is developed.

⁴ See the Docklands Light Railway (Stratford International Extension) Order 2006 S.I. 2006/2905.

- 7.10 The article also provides that, where the undertaker needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.
- 7.11 The article also includes specific provisions in relation to the acquisition of rights for the benefit of statutory undertakers, and also specifically Cadent Gas Limited.
- 7.12 Paragraph (7) applies Schedule 7 for the purpose of imposing modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation code applies equally to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories and is commonplace in Transport and Works Act Orders and DCOs such as the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 and the Silvertown Tunnel Order 2018. For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.
- 7.13 The Applicant confirms that this article and Schedule 7 have been drafted to take account of the Housing and Planning Act 2016 and the precedent in this regard created by the recent Silvertown Tunnel Order 2018.

Article 27 – Acquisition of airspace and subsoil, etc., only

- 7.14 This article allows the undertaker to compulsorily acquire land and/or new rights below the surface or in the airspace, as required for the new bridge and its protection from subsequent development and other conflicting events or actions, instead of acquiring all of the land up to and including the surface and airspace.
- 7.15 The purpose of article 27 is to give the undertaker the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on landowners and lower compensation payments. It is considered to be in the public interest to provide this flexibility at the point at which the undertaker begins to acquire the necessary land.
- 7.16 Paragraph (2) references Schedule 8 (Land in which only airspace and new rights may be acquired) and provides that only the ‘subsoil’ or airspace contained in plots listed in that schedule can be acquired.
- 7.17 Paragraph (5) makes clear, for the purposes of paragraph (2), the meaning of ‘subsoil’.

- 7.18 The drafting of this article is based on the precedents found in the Model Provisions and DCOs such as the Northumberland County Council (A1-South East Northumberland Link Road (Morpeth Northern Bypass) Development Consent Order 2015 and the Silvertown Tunnel Order 2018 but with a specific focus on airspace for this bridge project.

Article 28 – Private rights over land

- 7.19 This article applies to extinguish private rights generally and not just rights of way. This enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the Scheme. It also provides for the extinguishment of private rights over such parts of the Order land as are already owned by the undertaker, when any activity authorised by the Order interferes with or breaches those rights. This draws on the approach taken in the Rookery South (Resource Recovery Facility) Order 2011, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013, in the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016.

Article 29 – Power to override easements and other rights

- 7.20 This article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4), and paragraphs 2 and 3 of Part 1 of Schedule 5 to the Act. This article has precedent in, for example, article 32 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. It provides that land vested in the undertaker is discharged from all rights, trusts and incidents to which it was previously subject at the point of vesting, together with the benefit of restrictive covenants and instances where land subject to third party rights is acquired by agreement rather than through compulsory acquisition. It also provides for the situation where access to the land for the purposes of the authorised development occurs before vesting.

Article 30 – Rights over or under streets

- 7.21 The purpose of this article is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.
- 7.22 It has been included in the Model Provisions and the majority of DCOs made to date. It is considered that this article should be retained notwithstanding the Housing and Planning Act 2016, and it was retained in the Silvertown Tunnel Order 2018.

Article 31 – Application of the 1981 Act

- 7.23 This article applies the provisions of the 1981 Act to compulsory acquisition under the Order. Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of serving a notice to treat). They allow title in the land concerned to pass to the acquiring authority more expeditiously than it would through the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure.
- 7.24 Such an article has been included in the Model Provisions and the majority of DCOs made to date but the drafting used in the Order has been adapted, following the M20 Junction 10a Development Consent Order 2017 and the Silvertown Tunnel Order 2018, to take account of the Housing and Planning Act 2016.

Article 32 – Modification of the 1965 Act

- 7.25 This article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the Planning Act 2008.
- 7.26 This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 32 and 33 of this Order. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017 and the Silvertown Tunnel Order 2018.

8. PART 3 - POWERS OF ACQUISITION AND POSSESSION OF LAND – TEMPORARY POSSESSION OF LAND

Article 33 – Temporary use of land for carrying out the authorised development

- 8.1 The purpose of this article is to allow the land set out in Schedule 9 to be occupied and used temporarily while the works are carried out. This is land which is required during construction of the authorised development but not required permanently.
- 8.2 Article 33 also allows for the temporary occupation of any of the land intended for permanent acquisition, or for the acquisition of new rights, but which has, or which have, not yet been acquired.
- 8.3 The drafting is broadly in line with such articles in made DCOs such as the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014, but has been adapted to make it clear what can be done on Schedule 9 land, and what can be done on land intended for permanent acquisition.

- 8.4 Such possession requires prior notification to the owner and occupier of the land. The notice period is a minimum of three months (or such other period as may be agreed in writing between the undertaker and the owner of the land). This is more than the 21 days given in previous DCOs, but reflects the forthcoming changes to the temporary possession regime envisaged by the Neighbourhood Planning Act 2017.
- 8.5 The article provides for any of the authorised development listed in Schedule 1, in particular, to be built and left on land that has been temporarily occupied. The rationale for this is that it reduces the need for the compulsory acquisition of land.
- 8.6 The time limits set out in article 25 (*Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily*) apply to this article.

Article 34– Temporary use of land for maintaining the authorised development

- 8.7 This article provides that the undertaker may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose. Owners and occupiers of the land must be given a minimum of 3 months' notice and that notice must include details of the purpose for which the undertaker requires the land. Owners and occupiers are also entitled to compensation, where the power is exercised. The power is exercisable within a period of 5 years from the time the particular infrastructure is first (a) opened for use; or (b) brought into operational use (as the case may be).
- 8.8 The power is deliberately not included within the definition of 'maintenance period' as such power will be needed throughout the lifetime of the new bridge.
- 8.9 This power does not apply to houses, gardens or any other buildings for the time being occupied.
- 8.10 The drafting reflects precedents such as the Northumberland County Council (A1-South East Northumberland Link Road (Morpeth Northern Bypass) Development Consent Order 2015 and the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016.

9. **PART 3 - POWERS OF ACQUISITION AND POSSESSION OF LAND – SUPPLEMENTARY**

Article 35 – Statutory undertakers and utilities

- 9.1 This article (precedented, for example, in the M20 Junction 10a Development Consent Order 2017) allows the undertaker to extinguish rights of statutory undertakers (i.e. utilities such as electricity and gas companies), and remove and reposition their apparatus. Reference is

made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the land plans and described in the book of reference. In practice it is impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required. The precedent has been modified to reflect recent practice to ensure that electronic communications code operators are protected by this article to ensure consistency with the protective provisions for such parties.

- 9.2 As the land where this power may be exercised is shown on the land plans, and the beneficiaries of such rights are identified in the book of reference, the requirements of regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.

Article 36 - Apparatus and rights of statutory undertakers and utilities in stopped up streets

- 9.3 This article (which reflects the Model Provisions but with tweaks to the definitions used within it) governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are stopped up by the Order. Without the article, the statutory utility would not have access to the apparatus, since there would no longer be a right of way along the street. The undertaker may require such a statutory utility to relocate the apparatus elsewhere, although it will compensate the statutory utility for doing so. Paragraph (6) discounts from this compensation the increase in value to the statutory utility of having new rather than old (i.e. older than 7½ years) apparatus.

- 9.4 Paragraph (7) provides that in certain cases the cost of relocating apparatus will be subject to alternative cost sharing arrangements between the undertaker and the statutory utility which are provided for in regulations made under section 85 of the 1991 Act.

Article 37 – Recovery of costs of new connections

- 9.5 This article (which reflects the Model Provisions) provides that if a gas, water, electricity or sewerage undertaker's or public communications provider's apparatus is removed thereby interrupting the service to owners or occupiers of premises, their costs incurred in obtaining a new service can be recovered from the undertaker.

10. PART 3 - POWERS OF ACQUISITION AND POSSESSION OF LAND – COMPENSATION

Article 38 - Disregard of certain interests and improvements

- 10.1 This article provides for the Tribunal to disregard certain interests in and enhancements to the value of land for the purposes of assessing

compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.

- 10.2 It complies with section 126 of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and the River Humber Gas Pipeline Replacement Order 2016, and TWAOs such as the London Underground (Northern Line Extension) Order 2014 and the Midland Metro (Wolverhampton City Centre Extension) Order 2016.
- 10.3 The wording of this article mirrors section 4 (*Assessment of compensation*) of the Acquisition of Land Act 1981 (in this paragraph "the 1981 Act"). It is necessary to specifically apply the effect of section 4 of the 1981 Act in the Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and the Act (nor standard Order provisions) does not apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 39 - Set-off for enhancement in value of retained land

- 10.4 This article provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development.
- 10.5 This article complies with section 126(2) of the 2008 Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and TWAOs such as the London Underground (Northern Line Extension) Order 2014 and the Midland Metro (Wolverhampton City Centre Extension) Order 2016.
- 10.6 The principle in this article was established in section 7 of the Land Compensation Act 1961 (*effect of certain actual or prospective development of adjacent land in same ownership*). That section has now been repealed and replaced with section 6B of the same Act; which continues the same principles that need to be applied by the Order. Sections 120(3) and 120(5)(a) of and Schedule 5 (by virtue of section 120(3)) to the Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 40 – No double recovery

- 10.7 This article provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, the article provides that there is not to be double recovery under two or more different provisions of this Order.
- 10.8 The principle of equivalence, namely that a claimant in a compulsory purchase matter shall be compensated for no more than and no less than his loss, is long established and no part of the compensation code conflicts with this principle.
- 10.9 This article is preceded in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, the National Grid (Richborough Connection Project) Development Consent Order 2017 and the North London Heat and Power Generating Station Order 2017.

11. **PART 4 – OPERATIONAL PROVISIONS**

Article 41 – Operation of the new bridge

- 11.1 This article provides for the undertaker to be responsible for the operation of the new bridge pursuant to a Scheme of Operation certified under the Order. This is an operational provision as it dictates how the authorised development will work, rather than a requirement included to make the Scheme acceptable in planning terms.
- 11.2 The article also provides the processes by which the Scheme of Operation is able to be varied or replaced by either the undertaker or the Harbour Authority and how any disputes in relation to such variation or replacement are to be resolved.

11.3

Article 42 – Extinguishment of right of navigation within Lake Lothing in connection with the authorised development

- 11.4 This article provides for the permanent extinguishment of the public right of navigation in the vicinity of the new bridge structure, once constructed. The purpose of such extinguishment would be to protect the new bridge structure. The area within which rights of navigation are to be extinguished is identified by reference to the relevant parts of the new bridge structure. It is the Applicant's intention that the area affected would be that between the bridge piers and their respective protective fenders and the quay walls on either side. The navigable channel itself would not be affected and its existing width (of 32 metres) would be preserved.
- 11.5 The article provides that notice of the extinguishment must be published in advance; the article prescribes the procedures for giving notice.
- 11.6 Paragraphs (5) and (6) provide a mechanism for vessels to enter into the closed areas (e.g. for surveys) with the consent of the undertaker,

save for those vessels that are under the control of the Harbour Authority or harbour master.

11.7 No provision for compensation is provided in this article, for the same reasons as set out in relation to article 20 above.

11.8 This article is partially based on equivalent provisions in the Thames Water Limited (Thames Tideway Tunnel) Order 2014.

Article 43 – Maintenance of authorised development

11.9 This article provides a general power for the undertaker to maintain the authorised development, but not to the extent that doing so would produce results that would give rise to any materially new or materially different environmental effects to those assessed in the environmental statement.

Article 44 – Subsidiary works and operations in Lake Lothing

11.10 This article provides for the general and ancillary works required to be carried out as part of the operation and maintenance of the authorised development to facilitate the integration of the operation of the new bridge with existing operational regimes in Lowestoft Harbour. In particular it authorises maintenance dredging (rather than capital dredging during construction, which is authorised through its inclusion in Schedule 1). Works authorised under this article must not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement, pursuant to paragraph (2).

Article 45 – Protection against dredging

11.11 This article provides that the Harbour Authority may only undertake capital dredging in the vicinity of the new bridge with the undertaker's consent. This article is intended to protect the structure of the new bridge from harm. The Harbour Authority's ongoing maintenance dredging requires only notification to the undertaker.

Article 46 – Byelaws

11.12 This article provides that the undertaker may make byelaws regulating the use and operation of the new bridge, the maintenance of order, the conduct of persons in the new bridge area, and the mooring of vessels to, and the passage of vessels under, the new bridge.

11.13 Paragraph (2) sets out examples of the type of activities that the byelaws may regulate, including, but not limited to, the use and operation of the new bridge, the maintenance of order and the conduct of persons in the new bridge area, in order to ensure its safe and continued operation and the amenity of the Port of Lowestoft.

- 11.14 Paragraph (3) provides that the undertaker must consult the harbour authority before making any byelaws that are made following the making of the DCO and the byelaws included within it.
- 11.15 Paragraph (4) provides that the byelaws in Schedule 10 have effect, following confirmation by the Secretary of State, in relation to the new bridge; it also provides for the subsequent variation or revocation of byelaws in connection with the Order and the Scheme and for the making of further byelaws by the undertaker.
- 11.16 Paragraph (5) makes amendments to the existing byelaws for the Port of Lowestoft to take account of the existence of the new bridge.
- 11.17 Paragraphs (6) and (7) seek to ensure that no future byelaws can be made which will affect the new bridge without the consent of the undertaker, and that the undertaker's byelaws will always prevail where there is any inconsistency with ABP's current or future byelaws.
- 11.18 Paragraphs (8) and (9) set out the mechanisms by which future byelaws may be made.
- 11.19 Paragraph (11) provides that a breach of the byelaws may constitute an offence (on summary conviction liable to a fine not exceeding Level 3 on the standard scale).
- 11.20 Paragraph (12) provides that where a breach of a byelaw by a vessel leads to damage to the new bridge, the undertaker can recover expenses from the person in charge of a vessel for repairing the bridge.
- 11.21 Paragraph (13) requires that the Harbour Authority must provide reasonable information requested by the undertaker where the undertaker reasonably suspects a breach of the byelaws has been committed by a person in charge of a vessel within ten days of the receipt of such a request. This is required to enable the undertaker to be able to properly enforce the powers given in paragraph (6).
- 11.22 The scope of byelaws set out in this Article and in Schedule 10 are of the same nature as those in force at Mersey, Humber and Poole Bridges, and as set out in the recently made Silvertown Tunnel Order 2018.

Article 47 – Fixed penalty notices

- 11.23 This article gives an authorised person the power to serve a fixed penalty notice on a person who has committed an offence under byelaws made under article 46. A person who has breached a byelaw can avoid prosecution by paying the penalty. The amount of the fixed penalty is expressed as a percentage of the maximum fine which may be imposed, i.e. the maximum amount that applies from time to time under level 3 on the standard scale (currently £1,000). A person who pays the penalty in 7 days will only pay one fifth of the maximum

amount of the fine; otherwise the penalty will be one half of the maximum amount of the fine. Failure to pay within 14 days exposes the offender to the risk of prosecution. Provision is made for a deposit to be taken from those offenders who cannot provide a UK residential address.

- 11.24 The ability for DCOs to include such an article has precedent in the recently made Silvertown Tunnel Order 2018.

12. **PART 5 – MISCELLANEOUS AND GENERAL**

Article 48 – Benefit of order

- 12.1 Article 47 (which is preceded in DCOs such as the Northumberland County Council (A1-South East Northumberland Link Road (Morpeth Northern Bypass) 2015) overrides section 156(1) of the Act (as permitted by section 156(2)) to give the benefit of the Order to the undertaker rather than anyone with an interest in the land. It would be impracticable for a variety of landowners to implement parts of the Order in an uncoordinated manner, which might be the case if section 156(1) were to apply.
- 12.2 The purpose of paragraph (2) is to clarify the exceptions where the Order will self-evidently benefit others, e.g. rights for statutory undertakers, and mitigation works outlined in the Schedule 1 description of the authorised development. Without this provision, there would be a contradiction, since strictly speaking only the undertaker could benefit from these works.

Article 49 – Transfer of benefit of Order, etc.

- 12.3 This article allows powers under the Order to be transferred to others, with the consent of the Secretary of State. The ability to use a power such as this has been included in the majority of made DCOs to date.
- 12.4 Paragraph (4) provides that a transfer of functions to the Harbour Authority or a statutory undertaker would not require the consent of the Secretary of State. This is because it is envisaged that this article would be utilised by the undertaker to transfer to the Harbour Authority or a statutory undertaker any such functions as would ordinarily come within either of the latter's statutory remit.
- 12.5 Paragraphs (5) and (6) provide for notifications and consultations to be undertaken, to the MMO and Cadent respectively, where a transfer of benefit is to be carried out under this article.

Article 50 – Planning Permission

- 12.6 This article permits certain development authorised by a planning permission granted under the Town and Country Planning Act 1990 that is within the Order limits to be carried out pursuant to the terms of the planning permission, without breaching the Order. This provision is

not a model provision, but ensures that the undertaker does not breach section 161 of the 2008 Act in carrying out certain development pursuant to a grant of planning permission. This article has precedent in The M20 Junction 10a Development Consent Order 2017.

Article 51 - Application of highways and town and country planning law

- 12.7 This article is provided to ensure that once the authorised development is constructed, the highway that is built is able to benefit from permitted development rights and be subject to the powers of the Highways Act 1980 and the New Roads and Street Works Act 1991.
- 12.8 This is required as after the Scheme is built, the roads constructed as part of the authorised development will become part of Suffolk County Council's local highway network and will no longer be a separate project. At that stage, the highways comprising the Scheme will need to be capable of being dealt with in the same way as the rest of the network.

Article 52 – Application of landlord and tenant law

- 12.9 This article (precedented in, for example, the A19/1058 Coast Road (Junction Improvement) Development Consent Order 2016) provides that landlord and tenant law will be overridden so as not to prejudice the operation of any agreement entered into under article 48 (transfer of benefit of Order, etc.). This is required to enable such transfers to work on the terms agreed between the parties, given their statutory nature. This is particularly the case given the Harbour Authority's statutory duties.

Article 53 – Traffic regulation measures

- 12.10 The purpose of this article (precedented in, for example, the A19/1058 Coast Road (Junction Improvement) Development Consent Order 2016) and the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016, is to provide the undertaker with powers to make deemed traffic regulation orders, so that it can implement traffic regulation measures (e.g. restrictions on the use of roads) in connection with the authorised development.
- 12.11 It includes a number of specific traffic regulation measures that are required to enable the Scheme to operate properly, which are set out in Schedule 11 (and brought into effect by paragraph (1)), as well as more general powers by virtue of paragraph (3).
- 12.12 Implementation in certain circumstances is subject to the prior approval of the traffic authority in whose area the roads are situated and consultation with the relevant chief officer of police.

Article 54 – Clearways

12.13 This article facilitates the creation of a new clearway on the new bridge. The article creates the clearway, and sets out the circumstances in which vehicles will be able to stop where the clearway applies. It is based on the equivalent provision in the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016.

Article 55 – Deemed marine licence

12.14 This article constitutes deemed consent (as provided for under section 149A of the Act) under section 65 of the Marine and Coastal Access Act 2009 Act (the successor provision to section 34 of the Coast Protection Act 1949). Schedule 12 (deemed marine licence) to the Order sets out the terms on which the deemed marine licence would be granted.

Article 56– Defence to proceedings in respect of statutory nuisance

12.15 This article (precedented in, for example, the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016) provides a defence to statutory nuisance proceedings brought under the Environmental Protection Act 1990 in respect of noise emitted from premises. The defence is only available if:

- (a) the noise is created in the course of the carrying out or maintenance of the works authorised by the Order in accordance with a notice given under sections 60 or 61 of the Control of Pollution Act 1974; or
- (b) is a consequence of the construction, maintenance or use of the authorised development and cannot reasonably be avoided.

12.16 Section 61(9) of the Control of Pollution Act 1974 does not apply if 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.

Article 57 - Crown rights

12.17 This article is included due to the fact that Crown land consent has not been obtained by the Applicant in relation to the Highways England Historic Railways Estate prior to the end of Examination. It is a slightly amended version of wording suggested by the Examining Authority.

Article 58 – Protective provisions

12.18 This article introduces Schedule 13, which contains provisions protecting the interests of third parties.

12.19 Schedule 13 currently contains protective provisions for the benefit of the following parties:

- 12.19.1 electricity, gas, water and sewerage undertakers;
- 12.19.2 electronic communications code networks operators, updated to take account of recent changes to the Electronic Communications Code;
- 12.19.3 the Environment Agency;
- 12.19.4 Network Rail;
- 12.19.5 the Harbour Authority;
- 12.19.6 Anglian Water; and
- 12.19.7 Cadent Gas Limited

Article 59 – Saving for Trinity House

- 12.20 This article ensures that nothing in the Order prejudices or derogates from any of the rights, duties or privileges of Trinity House. This provision was included in the Model Provisions and in offshore wind farm DCOs and harbour Orders made to date.

Article 60 – Certification of documents

- 12.21 This article (included in the Model Provisions and in the majority of DCOs made to date) provides for various plans and other documents to be certified by the Secretary of State as true copies of those documents referred to in the Order. The documents in question (with their reference and revision numbers) are listed in Schedule 14.

Article 61 – Service of notices.

- 12.22 This article (precedented in, for example, the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016), governs how any notices that may be served under the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the Act only apply to notices served under the Act itself and do not apply to notices served under the Order.
- 12.23 An article governing the service of documents is common in development consent orders and has numerous precedents.

Article 62 – Arbitration

- 12.24 This article governs what happens when two parties disagree in relation to the implementation or interpretation of any provision of the Order. A dispute must be referred to arbitration, and if the parties cannot agree on an arbitrator the appointment will be decided by the President of the Institution of Civil Engineers.

- 12.25 Paragraph (1) has been included in similar form in the Model Provisions and in the majority of made DCOs to date however paragraphs (2) and (3) have been newly created for the purposes of this Order, although the principle of timetabling arbitration was recently approved by the Secretary of State in the Millbrook Gas Fired Generating Station Order 2019.
- 12.26 These paragraphs have been inserted to ensure that there is greater certainty as to timeframes in the context of any disputes arising on implementation of this nationally significant infrastructure project.

Article 63 – Consents, agreements, certifications and approvals

- 12.27 This article provides a methodology for dealing with certain consents, agreements and approvals that need to be obtained by the undertaker under the Order. In summary, it ensures that any consents, agreements or approvals (a) cannot be unreasonably withheld or delayed; and (b) are deemed to be granted after a period of 28 days if no decision is made, beginning with the day on which any application for a consent, agreement or approval is made.
- 12.28 Any application for a consent, agreement or approval must include a written statement that the 28 day 'guillotine' provision (as described above) applies.
- 12.29 The purpose of the article is to draw together the usual provisions for consents, agreements and approvals under DCOs, rather than including them for each consent, agreement or approval required under the Order, which the undertaker considers would be unduly repetitive.

13. REQUIREMENTS

- 13.1 The requirements in Part 1 of Schedule 2 are the equivalent of planning conditions. Discussions are on-going with stakeholders as to their content.
- 13.2 All approvals will be sought from the county planning authority or the Environment Agency, as appropriate.
- 13.3 Turning to the purpose and effect of the requirements:
- 13.3.1 Requirement 1 contains a number of definitions used in Part 1 of Schedule 2.
- 13.3.2 Requirement 2 requires that the authorised development must be commenced within 5 years of the date on which the Order came into force.
- 13.3.3 Requirement 3 requires the authorised development to be designed and implemented in accordance with an update to the "interim design guidance manual" approved by the county planning authority, which

must consult the local planning authority, and in general accordance with the “general arrangement plans”, both of which are documents to be certified under the Order. It also requires certain details of highways design to be approved by the county planning authority prior to the commencement of works to which those highways details relate.

- 13.3.4 Requirement 4 requires the authorised development to be carried out in accordance with a published code of construction practice to be approved by the county planning authority, following consultation by the undertaker with East Suffolk Council and the Harbour Authority. This code of construction practice must be in accordance with the interim code of construction practice, a document certified under the Order, and setting out mitigation proposed in connection with the construction of the Scheme.
- 13.3.5 Requirement 5 requires the preparation and implementation of a landscaping scheme to be approved by the county planning authority, following consultation by the undertaker with East Suffolk Council; covering all hard and soft landscaping works including those listed in sub-paragraph (2), and which must be in general accordance with the landscaping plans, a document certified under the Order.
- 13.3.6 Requirement 6 requires that the surface water drainage system for the Scheme be approved by the county planning authority, following consultation by the undertaker with East Suffolk Council and the Harbour Authority. The proposed surface water drainage system must be in accordance with the drainage strategy, a document certified under the Order.
- 13.3.7 Requirement 7 requires that the highway lighting scheme for the Scheme be approved by the county planning authority, following consultation by the undertaker with East Suffolk Council and the Harbour Authority. The highways lighting scheme must be in accordance with the outline lighting strategy, a document certified under the Order.
- 13.3.8 Requirement 8 requires the undertaker to carry out certain activities in relation to land contamination and effects on groundwater, including at specific locations. In particular, a risk assessment must be carried out and a remediation strategy (where found to be necessary) must be consulted upon with the county planning authority, the Harbour Authority, or the Environment Agency, as appropriate.
- 13.3.9 Requirement 9 requires to undertaker to open the mooring proposed as Work No.7 of Schedule 1, prior to the opening of the new bridge to traffic.
- 13.3.10 Requirement 10 requires the undertaker to comply with the certified scheme-wide written schemes of investigation in carrying out the authorised development.

- 13.3.11 Requirement 11 sets out the process for the update of the preliminary navigation risk assessment once construction details are known by the undertaker and notes that that updated assessment will go on to form part of the Harbour Authority's navigation risk assessment for the Port of Lowestoft as a whole.
- 13.3.12 Requirement 12 requires the undertaker to deliver a package of traffic mitigation measures outwith the Order limits prior to opening of the new bridge, and undertake monitoring of specific junctions.
- 13.3.13 Requirement 13 requires the undertaker to submit an updated piling works risk assessment to the Environment Agency for approval and to carry out the authorised development in accordance with its recommendations.
- 13.3.14 Requirement 13 requires the undertaker to operate the operating signals of the new bridge in accordance with the certified operating signals assessment or any update to it submitted to and approved by the county planning authority.
- 13.3.15 Requirement 15 provides for a procedure for the amendment of details approved pursuant to the above requirements.
- 13.4 Part 2 of Schedule 2 provides a clear procedure for the discharge of requirements by the relevant body that is discharging a requirement. It is currently drafted in anticipation of further requirements being developed pursuant to ongoing discussions with stakeholders. It sets out clear time limits for decisions to be made and makes provision for circumstances where the discharging body requires further information to be provided in relation to an application for the discharge of a requirement.
- 13.5 Part 2 of Schedule 2 also includes an appeals process in respect of discharge, broadly in line with a number of DCOs made to date, including the Hinkley Point C (Nuclear Generating Station) Order 2013 and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. The process also applies in the circumstances where a notice under s.60 or 61 of the Control of Pollution Act 1974 is issued. This reflects provisions in Schedule 17 to the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and streamlines the appeal process, thus minimising the risk to timely delivery of the authorised development.

