
STATUTORY INSTRUMENTS

2020 No. 474

The Lake Lothing (Lowestoft) Third Crossing Order 2020

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.

Commencement Information

II Art. 4 in force at 21.5.2020, see [art. 1](#)

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.

- (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; 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.

(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 work 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.

(1) Numbered Work	(2) Upwards vertical limit of deviation	(3) Downwards vertical limit of deviation
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; and
- (d) does not permit the undertaker in constructing the bridge deck comprising part of Work No. 1B, to deviate downwards to a level which provides less than 4.9 metres headroom above the running rail of the railway.
- (8) The undertaker must not undertake any capital dredge to a depth lower than—
- (a) 6.4m below chart datum in respect of works in Lake Lothing except Work No.7; and

(b) 3m 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 paragraph 3(2) of Schedule 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.

Commencement Information

I2 Art. 5 in force at 21.5.2020, see [art. 1](#)

Streets

Street works

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

- (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.

Commencement Information

I3 Art. 6 in force at 21.5.2020, see [art. 1](#)

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^{M1} (dual carriageways and roundabouts) of the 1980 Act or section 184^{M2} (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^{M3} (directions as to timing);
- section 56A^{M4} (power to give directions as to placing of apparatus);
- section 58^{M5} (restrictions following substantial road works);
- section 58A^{M6} (restriction on works following substantial street works);
- section 73A^{M7} (power to require undertaker to re-surface street);
- section 73B^{M8} (power to specify timing etc. of re-surfacing);
- section 73C^{M9} (materials; workmanship and standard of re-surfacing);
- section 78A^{M10} (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A^{M11} (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 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^{M12} referred to in paragraph (4) are—

- section 54^{M13} (advance notice of certain works), subject to paragraph (6);
- section 55^{M14} (notice of starting date of works), subject to paragraph (6);
- section 57^{M15} (notice of emergency works);
- section 59^{M16} (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 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.

Commencement Information

I4 Art. 7 in force at 21.5.2020, see [art. 1](#)

Marginal Citations

- M1** [Section 64](#) was amended by Schedule 17 to the [Local Government Act 1985 \(c. 51\)](#) and Schedule 9 to the 1991 Act.
- M2** [Section 184](#) was 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.
- M3** [Section 56](#) was amended by section 43 of the 2004 Act.
- M4** [Section 56A](#) was inserted by section 44 of the 2004 Act.
- M5** [Section 58](#) was amended by section 51 of the 2004 Act.
- M6** [Section 58A](#) was inserted by section 52(1) of the 2004 Act.
- M7** [Section 73A](#) was inserted by section 55(1) of the 2004 Act.
- M8** [Section 73B](#) was inserted by section 55(1) of the 2004 Act.
- M9** [Section 73C](#) was inserted by section 55(1) of the 2004 Act.
- M10** [Section 78A](#) was inserted by section 57(1) of the 2004 Act.
- M11** [Schedule 3A](#) was inserted by section 52(2) of, and Schedule 4 to, the 2004 Act.
- M12** [Sections 54, 55, 57, 60, 68](#) and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the 2004 Act.
- M13** [Section 54](#) was also amended by section 49(1) of the 2004 Act.
- M14** [Section 55](#) was also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 Act.
- M15** [Section 57](#) was also amended by section 52(3) of the 2004 Act.
- M16** [Section 59](#) was amended by section 42 of the 2004 Act.

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 dedicated as public highway on the expiry of a period of 12 months from completion of the works to 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 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 is to be agreed by the undertaker and the street authority.

Commencement Information

I5 Art. 8 in force at 21.5.2020, see [art. 1](#)

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 16 of Part 1 (A12 and A146) of Schedule 3 are to be classified as the A12, 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 17 to 24 of Part 1 of Schedule 3 are to be classified as the A146, 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 (other roads) 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.

Commencement Information

I6 Art. 9 in force at 21.5.2020, see [art. 1](#)

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, 2, and 3 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 Part 1 (highways to be stopped up for which a substitute is to be provided and new highways which are otherwise provided) and Part 2 (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) of Schedule 4 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 3 (private means of access to be stopped up for which no substitute is to be provided) of Schedule 4 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;
- (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 of the street 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 36 (apparatus and rights of statutory undertakers and utilities in stopped up streets).

Commencement Information

I7 Art. 10 in force at 21.5.2020, see [art. 1](#)

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 the 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.

(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.

Commencement Information

I8 Art. 11 in force at 21.5.2020, see [art. 1](#)

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.

Commencement Information

I9 Art. 12 in force at 21.5.2020, see [art. 1](#)

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 ^{M17} (power of highway authorities to adopt by agreement) of the 1980 Act; and
 - (d) contain such terms as to payment and otherwise as the parties consider appropriate.

Commencement Information

I10 Art. 13 in force at 21.5.2020, see [art. 1](#)

Marginal Citations

M17 [Section 38](#) was 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 \(c. 7\)](#).

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.

Commencement Information

I11 Art. 14 in force at 21.5.2020, see [art. 1](#)

Supplemental powers

Discharge of water

15.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse, 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 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^{M18}.

(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; and
- (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.

Commencement Information

I12 Art. 15 in force at 21.5.2020, see [art. 1](#)

Marginal Citations

M18 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 \(c. 29\)](#).

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))—

- (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 enter and 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) 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 62 (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 40 (no double recovery), nothing in this article relieves the undertaker from any liability to pay compensation under section 152^{M19} (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Section 13^{M20} (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^{M21} (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;
- (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
- (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.

Commencement Information

I13 Art. 16 in force at 21.5.2020, see [art. 1](#)

Marginal Citations

M19 [Section 152](#) was amended by [S.I. 2009/1307](#).

M20 [Section 13](#) was amended by sections 62(3) and 139(4) to (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).

M21 [Section 125](#) was amended by section 190 of, and paragraph 17 of Schedule 16 to, the [Housing and Planning Act 2016](#) (c. 22).

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 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 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.

Commencement Information

I14 Art. 17 in force at 21.5.2020, see [art. 1](#)

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.

Commencement Information

I15 Art. 18 in force at 21.5.2020, see [art. 1](#)

Trees subject to tree preservation orders

19.—(1) The undertaker may fell or lop any tree described in Schedule 5 (trees subject to tree preservation orders) 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) (replacement of trees) of the 1990 Act is not to 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, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Commencement Information

I16 Art. 19 in force at 21.5.2020, see [art. 1](#)

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 PMSC Stakeholder 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, in which case 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.

Commencement Information

117 Art. 20 in force at 21.5.2020, see [art. 1](#)

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.

Changes to legislation: There are currently no known outstanding effects for the The Lake
Lothing (Lowestoft) Third Crossing Order 2020, PART 2. (See end of Document for details)

(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.

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Commencement Information

I18 Art. 21 in force at 21.5.2020, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Lake Lothing (Lowestoft) Third Crossing Order 2020, PART 2.