

Guidance Note – Revision 2 – April 2023

Operation & Maintenance Activities for Local Authority Highway Structures

over

Canal & River Trust Waterways

1. Introduction.

This **Guidance Note** has been prepared by the ADEPT National Bridges Group and the Canal & River Trust (the Trust) who have worked in a spirit of partnership to ensure the safety of waterway and highway users during operation and maintenance activities relating to existing Local Highway Authority (LHA) structures that cross, or otherwise interact with, waterways managed by the Trust. Wherever works are proposed that affect Trust land or statutory undertaking, the general requirement is that such works will be carried out in accordance with the technical requirements outlined in the Trust's "Code of Practice for Works Affecting the Canal & River Trust" (the **Code**), the latest version of which can be found on the Trust's website here:-

<https://canalrivertrust.org.uk/business-and-trade/undertaking-works-on-our-property-and-our-code-of-practice>

The requirements of the Code are modified as outlined below to accommodate the unique requirements of LHAs as public sector organisations, who retain certain statutory powers of access to their highways structures.

This Guidance Note will be used to outline the areas where it is agreed by the Trust and ADEPT that the requirements of the Code shall be varied from the standard wording. If any later revisions of the Code affect the wording of this Guidance Note, these shall be agreed by the Trust and ADEPT together. This Guidance Note is not intended to alter any particular agreements that are already in place for specific structures.

The provisions of this note will apply from July 2021 to March 2026 and may be extended by agreement. For the purposes of 291(6) Highways Act 1980, this note is an agreement relating to the maintenance of existing bridges or other highway structures which cross over, or otherwise interact with the operation of the Trust's waterways.

Any works undertaken by local authorities that do not relate to their rights under the Highways Act 1980 and the Transport Act 1968 shall be managed in accordance with the current version of the Trust's "Code of Practice for Works Affecting the Canal & River Trust", as published on its website.

2. Legal Background

2.1 LHAs have rights under sections 289 and 291 of the Highways Act 1980 (HA80) to enter land to undertake their statutory duties. These rights may be used on any land which is not owned by that LHA or does not form part of the highway and may include land owned by the Canal & River Trust. These rights are expressly subject to (i) the need for the LHA to act reasonably in

exercising its rights, and (ii) any agreement between the LHA and the Trust relating to a particular structure – s. 291(6).

2.2 Under section 118(4) of the Transport Act 1968 (TA68), the default position is that the Trust should afford the LHA access to its land to carry out statutory maintenance of its bridges in order to protect any traffic using the inland waterway crossed by that bridge. However, this presumption of a right of access may be refused by the Trust if, in its unfettered opinion, the work would:

- 2.2.1 involve danger to;
- 2.2.2 or interference with;
- 2.2.3 or require any restriction to be placed on;

traffic using that inland waterway. The parties recognise that such access will for practical purposes be subject to the same reasonableness requirements on the LHA as for the exercise of its rights under sections 289 and 291 HA80.

2.3 Under section 292 of the HA80, the Trust is entitled to compensation for any damage to land or chattels caused by a LHA exercising its rights under section 289 or 291. Additionally, the Trust may also have a claim in nuisance or other common law right of action for any damage or loss suffered. Subject to the provisions of TA68, section 292 also criminalises the wilful obstruction of an LHA in the exercise of its rights of access.

2.4 . LHAs also have a duty under s.41 of the HA80 to maintain the highway. For the avoidance of doubt, where the LHA needs to gain access highway assets that cross, or otherwise interact with, a waterway to fulfil those s.41 duties, it will make all reasonable efforts to liaise with the Trust, in advance of and during the works to minimise disruption, and provide the Trust with the opportunity to review whether they are likely to involve danger to or interfere with the traffic using the waterway..

2.5 This note only applies to works notified to the Trust after the date of this note and covered by the statutory provisions set out above and nothing in this note prejudices the statutory rights and obligations of the LHAs and/or the Trust.

3. Reasonable Costs

3.1 The LHAs accept that the Trust is a statutory undertaker and has a duty of care for the safety of its workers and customers, and statutory duties in respect of the wider heritage and natural environment of its network of canal and river navigations, and is entitled to recover its reasonable costs in assessing the impact of any proposed works on its undertaking, including the arrangement of waterway and towpath restrictions and/or closures as requested by the LHAs

3.2 The Trust will recover its reasonable costs on a project-by-project basis by determining the time spent by members of staff multiplied by the agreed cost recovery rate – See Appendix 1. For the avoidance of doubt this method will also be used to determine the costs of processing applications to carry out work, engineering input, document review, and planning and management of stoppages, towpath closures and associated notices. Additional charges in the Code will not be levied, for example for summer/winter stoppages, stoppage overruns, and late booking fees. Should it be necessary for the Trust to engage external consultants then these services will be recovered at cost.

3.3 In the event that LHA works overrun beyond the agreed navigation closure/restriction period, the LHAs accept liability for

- 3.3.1 any reasonable costs incurred by the Trust in managing the extended closure

3.3.2 payment of reasonable costs relating to verified claims from the Trust's customers relating to the closure/restriction not being lifted by/on the published date. For information such requests could include but not be limited to:-

3.3.2.1 The need for boats to pass by the location of the closure/restriction – thereby requiring craneage, transport etc

3.3.2.2 Disruption to waterway and towpath related businesses – hire/day boats, trading boats, hotel boats, trip boats, rowing clubs, angling clubs etc

3.3.2.3

The parties agree that any third party claimant above would need to provide evidence of its loss for it to become payable. The Trust agrees to provide that evidence to the LHA if it is requested to do so

3.4 Nothing in this guidance note affects the rights of the Trust to recover compensation for disturbance under section 292 of the Highways Act 1980 or pursue any other common law right of action for any damage or loss suffered as a result of LHA works on its land or undertaking.

4. ADEPT / THE TRUST Liaison Team

This Guidance Note has been co-produced by the ADEPT Engineering Board and the Trust's Infrastructure Services Team. It will be managed by a Liaison Team consisting of a nominated member of ADEPT Bridges Group and a nominated member of the Trust (Infrastructure Services Team Manager or nominated deputy). The Liaison Team will meet on a basis to be agreed but at least once per calendar year and submit a report to the next available ADEPT National Bridges Group. The purpose of the Liaison Team will include, but is not limited to, the consideration of:

- Progress and implementation of this Guidance Note
- Improvements and/or amendments to this Guidance Note
- Opportunities for collaborative working
- Mediation in disputes between parties
- Activities that impact on shared assets such as changes to bridge weight limits

Amendments to this Guidance Note will require the approval of the ADEPT National Bridges Group and the Trust's Infrastructure Services Team Manager.

In the event of a disagreement then the matter will first be referred to the President of ADEPT and the Chief Operating Officer of the Trust. However, if it is not possible to resolve any issues in this manner within a reasonable time, then this does not preclude the relevant LHA and Trust from proceeding with arbitration as detailed in S118(9) TA68.

5. Activities Covered and Responsibilities

Schedule	LHA Responsibilities / Deliverable	CRT Responsibilities / Deliverables	Minimum notification period
1 – Surveys undertaken on foot	<ul style="list-style-type: none"> • Notice of intent to undertake works • Risk Assessment 	<ul style="list-style-type: none"> • Issue acknowledgement of Notice • Receipt of Risk Assessment 	2 weeks prior to start of survey, when possible
2 – Other Surveys and Works Not Requiring Closures or Restrictions	<ul style="list-style-type: none"> • Issue Notice of intent to undertake works, attaching completed Form 1 • Collaborate with the Trust to mitigate disruption as far as is reasonably practicable • Return signed Cost Undertaking with Purchase Order Number • Issue Works Documentation Including: <ol style="list-style-type: none"> 1. Risk Assessment & Method Statements 2. Draft Programme of Work 3. Drawings (if appropriate) 4. Copy of current Public Liability insurance or evidence of self-insurance 5. And <u>if Diving</u>: Diving Contractor’s Dive Plan in accordance with Diving at Work Regulations 1992. • Inform the Trust of project progress including confirmation of start and completion of works 	<ul style="list-style-type: none"> • Issue acknowledgement of Notice • Issue standard response including Form 2(LHA). Provide cost estimate if requested in accordance with schedule of rates in Appendix 1. • Collaborate with LHA to mitigate the disruption as far as is reasonably practicable • <u>If diving</u>, provide Dive Hazard Plan • Review works documentation and provide comment where appropriate • Accept Programme in Principle and Notify Canal Users of the upcoming restriction • Issue Permit for Site Access (Form 4) • Conduct site visits as required • Issue Invoice with substantiated costs 	4 weeks prior to start of survey or works
3 – Other Surveys and Works requiring Stoppages, Restrictions and Closures ¹	<p>As Schedule 2, Plus:</p> <ul style="list-style-type: none"> • Issue draft programme with proposed dates for Stoppages, Restrictions and/or Closures. • Collaborate with the Trust to mitigate disruption as far as is reasonably practicable • Reimburse the Trust for all substantiated reasonable costs incurred by the Trust as a direct consequence of LHA works. 	<p>As Schedule 2, Plus:</p> <ul style="list-style-type: none"> • Review Proposed dates for Stoppages, Restrictions or Closures. • Collaborate with LHA to mitigate the disruption as far as reasonably practicable. • Issue Agreement in Principle for dates of Canal Stoppage(s), Restrictions and Tow Path Closures at Planning Stage • Notify and manage queries and complaints of Canal User of the upcoming restriction. • For stoppage overruns, manage compensation claims and complaints from Trust customers and present to LHA for reimbursement 	By 1 March for stoppages /restrictions for upcoming Winter - see CoP for dates
4 – Emergency Works	<ul style="list-style-type: none"> • Notice of Emergency Works to be issued to the Trust as soon as reasonably practicable. • Collaborate with the Trust to make safe and plan remedial works. • In an emergency, “make safe” measures shall be conducted as soon as safely practicable. 	<ul style="list-style-type: none"> • Acknowledge receipt of Notice for Emergency Works. • Collaborate with LHA to agree remedial works and plan any future work. • Agree costs retrospectively 	As soon as practicable

6. Additional notes

- 6.1 Canal Stoppages and Towpath Closures should be avoided if possible. Alternative working arrangements found in the CoP (Part 1, Section 5) should be considered at the planning stage of the project.
- 6.2 It is considered best practice for each LHA to share its annual programme of planned inspections and works with the Trust at the start of each financial year. This provides transparency and is an organised and efficient means of ensuring both parties are aware of planned activities, notwithstanding that there may be changes to the programme over the year.
- 6.3 The Trust expects LHAs to take all reasonable measures to avoid a stoppage overrunning the agreed stoppage end date. This could include increasing resources on site, working additional hours/days, changing methods of work or any other reasonable measures.
- 6.4 The role of the Trust in reviewing Risk Assessments and Method Statements is to ensure that consideration has been given all factors affecting the operation and safety of the waterway and its users. It does not impact on the responsibility of the local authority or its Contractors with regard to safety.
- 6.5 The Trust will not require Licences (under Section 4 of the Code of Practice) for Works carried out in accordance with this Guidance

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April 2023

Appendix 1 – Schedule of Cost Recovery Rates Under Clause 3.2

The following staff cost recovery rates will be used by the Trust during the period 1 April 2023 to 31 March 2024 under Clause 3.2 of this note. For future years up to and including March 2026, the rates will be adjusted annually to by the average percentage salary increase for Trust staff, as agreed between the Trust and the Trade Unions (Unite & Unison). Currently salary increases are awarded in the Autumn of each year so for the avoidance of doubt the rate increase shall apply from 1 April each year based on the salary increase awarded the previous Autumn

Cost recovery rates from 1 April 2023 – 31 March 2024 are as below, and represent an increase of 8% over the 2022 rates from Yellow to Violet bands and 5.5% for Senior Management. Costs will be charged on the basis of hours, or part hours worked, rounded to 30 minute increments. For the avoidance of doubt no cost recovery will be made for work of less than 15 minutes or for administrative staff within the Trust's Infrastructure Services team

Title	Cost recovery rate (£ p/h)	Wider Trust Staff
Works Inspector	62.36	Green
Works Engineer	69.03	Blue
Senior Works Engineer	79.06	Indigo
Area Manager	79.06	Indigo
Infrastructure Services Team Manager	91.30	Violet
Senior Manager	103.34	Senior Management

Notes

1. "Wider Trust Staff" column. This column is to be used for the recovery of costs relating to Trust staff outside the Infrastructure Services Team e.g. for staff falling within the Trust's Green salary band the cost recovery would be £62.36 p/h
2. The costs of Admin staff outside the Infrastructure Services Team will be recovered at £50.11 p/h (Yellow salary band)

Appendix 2 – Forms

Form Number and Description	Usage
1 – Notification Form	Use form in current version of the Code of Practice
2 – Cost Undertaking	Use bespoke Form 2 (LHA) – see below
3 – Indemnity Agreement	Not required
4 – Site Access	Use form in current version of the Code of Practice
5 – Immediate Cessation	Use form in current version of the Code of Practice
6 – Surface Water Discharge	Use form in current version of the Code of Practice
7 – Sky Network Services Notification	Use form in current version of the Code of Practice
8 – Surety Bond	Not required

CANAL & RIVER TRUST (THE TRUST)

FORM 2 (LHA) : COST UNDERTAKING

[insert Scheme Title]

COST UNDERTAKING

[Insert name of Third Party] is proposing to [describe works] affecting the interests of the Trust at [location] as detailed on the attached plan. The requirement to cover the costs of the Trust is acknowledged as follows:

1. In consideration of the Trust processing the Application and engaging engineers, surveyors or other appropriate professionals (whether external or in-house) to advise the Trust and to subsequently proceed with the requisite work involved in the grant of permission to [insert company name] in respect of [scheme title] affecting land and/or property of the Trust, [insert company name] hereby agree and undertake to pay all reasonably incurred costs (accompanied by appropriate evidence where requested by the LHA) of the Trust (including VAT and disbursements) in relation to the matter and to follow the requirements and conditions set out in the latest version of the Code of Practice for Works Affecting the Canal & River Trust.

2. This undertaking will apply and the reasonably incurred costs of the Trust will be due whether or not the Works proceed, provided always that in the event that the Trust unreasonably withdraws from the negotiations in respect of the Works no liability for costs will become due from [insert company name].

3. This undertaking is given on the basis that fees in relation to this matter shall be charged at the rates set out in the ADEPT-CRT Guidance Document but will not, unless agreed between the parties, exceed the sum of (delete where not applicable) £5000/£7500/£10000 (excluding VAT and disbursements)

Purchase Order Number (please provide a copy).

4. If by [insert agreed date] no Works has been commenced (and accordingly no payment pursuant to this undertaking has been made) the Trust will be entitled to raise an invoice to [insert company name] (and [insert company name] agree and undertake to pay) the reasonable interim invoice and any further reasonable interim invoices thereafter on account of services rendered by the Trust in connection with this matter. Such interim payment or payments shall not in any way affect or compromise the continuing liability of this company pursuant to the terms of this undertaking.

5. This cost undertaking will take effect as of the date on which it is signed (this undertaking will need to be signed by an approved person).

6. This cost undertaking is not transferable.

7. If any sums payable to the Trust are unpaid on the due date then interest shall be payable (set at 8% above the base rate from time to time of the Bank of England) on the sum outstanding from the due date until the actual date of payment.

Your scheme reference number.....

Billing address.....

Company Registration number.....

Accounts payable email address(invoices will be emailed to this address)

Accounts Payable telephone number

Signed by..... Print name.....

On behalf of (insert company name).....

This agreement has been entered into on the date.....

Canal & River Trust are the data controller for the information which you are providing on this form. You can contact our Data Protection Officer at Information.Request@canalrivertrust.org.uk if you have any concerns regarding the use of your personal data. Our full privacy notice is on our website <https://canalrivertrust.org.uk/cookie-and-privacy-policy>.