



# Hythe Marina Village (Southampton) Wavescreen Act 1990

## CHAPTER iii

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**ELIZABETH II**



**1990 CHAPTER iii**

**An Act to authorise Hythe Marina Limited to construct works in Southampton Water; and for other purposes.  
[22nd February 1990]**

**W**HEREAS—

(1) Hythe Marina Limited (hereinafter referred to as “the Company”) are a company within the meaning of the Companies Act 1948:

1948 c. 38.

(2) The Company are developing a marina on reclaimed land adjacent to Southampton Water, with access by a lock which they have provided:

(3) At certain times of day, depending on the tide, there is congestion in Southampton Water at the lock, when a number of boats are waiting admission to the lock and as the marina is completed the congestion is expected to increase:

(4) It would be of advantage to those waiting to use the lock and it would enhance safety in the area, if a waiting basin were provided at the entrance to the lock:

(5) It is expedient that the Company be authorised to construct the works described in this Act:

(6) It is expedient that the other provisions of this Act be enacted:

(7) The objects of this Act cannot be attained without the authority of Parliament:

(8) A plan and sections showing the lines and levels of the works by this Act authorised have been deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons and with the proper officer of the Hampshire County Council, and such plan and sections are respectively referred to in this Act as the deposited plan and deposited sections:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows, that is to say:—

- Short title.      1. This Act may be cited as the Hythe Marina Village (Southampton) Wavescreen Act 1990.
- Interpretation.      2. In this Act, except where the context otherwise requires—
- “**A.B. Ports**” means Associated British Ports;
- “**the Company**” means Hythe Marina Limited and includes any successor in title to Hythe Marina Limited;
- “**the level of high water**” means the level of mean high-water springs;
- “**the limits of deviation**” means the limits of deviation shown on the deposited plan;
- “**moorings**” include mooring posts, floating jetties, pontoons, buoys and similar apparatus or facilities;
- “**tidal work**” means so much of any work authorised by this Act as is on, under or over tidal waters or tidal lands below the level of high water;
- “**Trinity House**” means the Corporation of Trinity House of Deptford Strond;
- “**vessel**” means a ship, boat or raft of any description or any other thing constructed or adapted for floating on or being submerged in water (whether permanently or temporarily) including a hovercraft within the meaning of the Hovercraft Act 1968 or any other amphibious vehicle or a seaplane;
- “**the works**” means Works Nos. 1 and 2 authorised by section 3 (Power to construct works) of this Act.
- 1968 c. 59.
- Power to construct works.      3.—(1) Subject to the provisions of this Act, when they have acquired the necessary interest in the land the Company may in the lines and situations and within the limits of deviation shown on the deposited plan, and according to the levels shown on the deposited sections, make and maintain in Southampton Water the works hereinafter described with all necessary works and conveniences connected therewith:—
- Work No. 1    A wavescreen of steel piles and timber panels between the points marked “**A**” and “**B**” on the deposited plan at National Grid reference SU42408 08754 and at National Grid reference SU42287 08690 respectively;
- Work No. 2    A wavescreen of steel piles and timber panels between the points marked “**C**” and “**D**” on the deposited plan at National Grid reference SU42432 08767 and at National Grid reference SU42394 08605 respectively.
- (2) In the construction of the works the Company may deviate laterally from the lines or situations thereof shown on the deposited plan to any extent not exceeding the limits of deviation, and may deviate vertically from the levels of those works shown on the deposited sections to any extent not exceeding 3·00 metres upwards or to any extent downwards.

(3) The Company may, within the limits of deviation, from time to time reconstruct, renew, alter, replace or re-lay the works and may maintain the same as reconstructed, renewed, altered, replaced or re-laid.

4. Subject to the provisions of this Act, the Company may from time to time construct, maintain and use—

- (1) within the limits of deviation all such works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the works; and
- (2) within the basin created by the works such works for the accommodation or convenience of vessels as they think fit, including, without prejudice to the generality of the foregoing, staging, quays, piers, piles, fixed or floating walkways, approaches, berthing heads, moorings, bollards, navigation marks and lights.

Power to make subsidiary and accommodation works.

5. The Company may from time to time deepen, dredge, scour, cleanse, alter and improve the foreshore and bed of Southampton Water within the basin created by the works and the channels and approaches thereto and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) from time to time dredged by them:

Dredging.

1894 c. 60.

Provided that no materials so dredged by them shall be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

6.—(1) A tidal work shall not be constructed, reconstructed, renewed, altered, replaced or re-laid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

Tidal works not to be executed without approval of Secretary of State.

(2) If a tidal work is constructed, reconstructed, renewed, altered, replaced or re-laid in contravention of this section or of any condition or restriction imposed under this section—

- (a) the Secretary of State may by notice in writing require the Company at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Company they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work, or part of it, and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

7.—(1) In case of injury to, or destruction or decay of, a tidal work, or any part thereof, the Company shall forthwith notify A.B. Ports and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as A.B. Ports shall from time to time direct.

Provision against danger to navigation.

(2) If the Company fail to notify A.B. Ports as required by this section or to comply in any respect with a direction given under this section they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed.

8.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Company at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work authorised by this Act and consisting partly of a tidal work and partly of works on or over land above the level of high water, is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion thereof, in any notice under this section.

(3) If, on the expiration of 30 days from the date when a notice under this section is served upon the Company they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the undertakers.

Survey of tidal works.

9. The Secretary of State may at any time, if he deems it expedient, order a survey and examination of a tidal work constructed by the Company or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the Company.

Permanent lights on tidal works.

10.—(1) After the completion of a tidal work, the Company shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as A.B. Ports shall from time to time direct.

(2) If the Company fail to comply in any respect with a direction given under this section, they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Lights on tidal works during construction.

11.—(1) The Company shall at or near a tidal work during the whole time of the construction, reconstruction, renewal, alteration, replacement or re-laying thereof or the addition thereto, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) If the Company fail to comply in any respect with a direction given under this section they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Crown rights.

12.—(1) Nothing in this Act affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Act authorises the Company to take, use, enter upon or in any manner interfere with any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those commissioners.

(2) A consent under subsection (1) above may be given unconditionally, or subject to such conditions and upon such terms as may be considered necessary or appropriate.

13. Nothing in this Act shall prejudice or derogate from any of the rights or privileges, or the jurisdiction or authority, of Trinity House. Saving for rights of Trinity House.

14. For the protection of A.B. Ports the following provisions shall, unless otherwise agreed in writing between the Company and A.B. Ports, apply and have effect:— For protection of A.B. Ports.

(1) In this section—

“construction” includes execution and placing, extension, enlargement, alteration, replacement or re-laying, and removal, and “constructed” shall be construed accordingly;

“plans” includes description, drawings and specifications:

- (2) (a) Before commencing the construction of a tidal work the Company shall furnish to A.B. Ports for its approval, which it shall not unreasonably withhold plans of the work showing the general mode of construction and such work shall not be constructed otherwise than in accordance with such plans as may be approved by A.B. Ports or as may be determined by the Secretary of State as hereinafter provided and all such works shall be executed to the reasonable satisfaction of A.B. Ports:
- (b) When submitting plans to the Secretary of State pursuant to section 6 (Tidal works not to be executed without approval of Secretary of State) of this Act, the Company shall send a copy thereof to A.B. Ports and the Company shall, on receipt of approval of plans or of any conditions or restrictions imposed under that section, send a copy to A.B. Ports:
- (c) In the event of A.B. Ports failing to express its disapproval of any plans within 56 days after they shall have been delivered to A.B. Ports under this paragraph, A.B. Ports shall be deemed to have approved them:
- (d) If it appears to the Company that A.B. Ports has unreasonably withheld its approval to any plans under this paragraph, the Company may appeal to the Secretary of State whose decision shall be final:
- (e) The Company shall at all reasonable times afford to the duly authorised representative of A.B. Ports all reasonable facilities for inspecting any tidal work in the course of construction:
- (3) The Company shall give to A.B. Ports not less than 14 days' written notice of its intention to commence the construction of a tidal work and, not more than 14 days after completion of such construction, shall give to A.B. Ports written notice of such completion:
- (4) After the purpose of any temporary structure has been accomplished the Company shall with all reasonable dispatch, or after a reasonable period of notice in writing from A.B. Ports requiring them so to do, remove any such temporary structure or any materials relating thereto which may have been placed below the level of high water by or on behalf of the Company and, on its failing so to do within a reasonable period after receiving such notice, A.B. Ports may remove the same and charge the Company with the reasonable expense of so doing, which expense the Company shall repay to A.B. Ports:

- (5) The Company shall not exercise the powers conferred on it by section 5 (Dredging) of this Act except with the written consent of A.B. Ports (which it shall not unreasonably withhold) and in accordance with such conditions and restrictions as may be reasonably prescribed by A.B. Ports:
- (6) The provisions of section 8 (Abatement of works abandoned or decayed), section 9 (Survey of tidal works) and section 11 (Lights on tidal works during construction) of this Act shall extend for the protection of A.B. Ports and, for that purpose, shall have effect as if for any reference therein to the Secretary of State, there were substituted a reference to A.B. Ports:
- (7) (a) Without prejudice to the other provisions of this section, the Company shall be responsible for, and make good to A.B. Ports all losses, costs, charges, damages and expenses however caused (including a proper proportion of the overhead charges of A.B. Ports) which may reasonably be incurred by or occasioned to A.B. Ports—
- (i) arising from the perusal of plans and the inspection of any tidal work by A.B. Ports or its duly authorised representative;
  - (ii) by reason of the construction of any of the works or the exercise by the Company of the powers conferred on it by section 5 (Dredging) of this Act, the failure of any of the works or the undertaking by A.B. Ports of works or measures for the prevention of danger to navigation arising from such failure;
  - (iii) by reason of any act or omission of the Company or its servants or agents whilst engaged in the construction of any of the works or the exercise of the powers conferred by the said section 5; and the Company shall indemnify A. B. Ports from and against all claims and demands arising out of, or in connection with, such construction, exercise, failure or act or omission as aforesaid;
- (b) A.B. Ports shall give to the Company notice of any claim or demand made against it which is a claim or demand for which the Company may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Company:
- (8) With the exception of any duty owed by A.B. Ports to the Company expressly provided for in the foregoing provisions of this section, nothing in this Act shall be construed as imposing upon A.B. Ports, either directly or indirectly, any form of duty or liability to which A.B. Ports would not otherwise be subject which is enforceable by proceedings before any Court:
- (9) Nothing in this Act shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, A.B. Ports at the commencement of this Act or any title of A.B. Ports in, to or over any lands or foreshore held or acquired by it.

Saving for town  
and country  
planning.  
S.I. 1988/1813.  
1971 c. 78.

15. Any development authorised by this Act shall not be deemed for the purposes of the Town and Country Planning General Development Order 1988 (or any general order superseding that order made under section 24 of the Town and Country Planning Act 1971, or any corresponding provision of an Act repealing that section), to be—

- (a) development authorised by an Act which designates specifically both the nature of the development and the land upon which it may be carried out; or

- (b) development by dock, pier or harbour undertakers or their lessees of operational land of the undertaking being development which is required for the purpose of shipping or in connection with the embarking, disembarking, loading, discharging or transport of passengers or goods at a dock, pier or harbour.

**16.—**(1) In proceedings for an offence under any provision of this Act mentioned in subsection (2) below it shall be a defence for the Company to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Defence of due diligence.

- (2) The provisions referred to in subsection (1) above are the following:—  
Section 7 (Provision against danger to navigation);  
Section 10 (Permanent lights on tidal works);  
Section 11 (Lights on tidal works during construction).

(3) If in any case the defence provided under subsection (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the Company shall not, without leave of the court, be entitled to rely on that defence unless, not less than 7 clear days before the hearing, they have served on the prosecutor a notice in writing giving such information as was then in their possession, identifying, or assisting in the identification of, that other person.



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