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STATUTORY INSTRUMENTS

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**2005 No. 1137**

**The Margate Pier (Turner Centre) Order 2005**

**PART 2**

**WORKS PROVISIONS**

**Power to construct and maintain works**

3.—(1) The Council may construct and maintain the scheduled works.

(2) Subject to article 4, the scheduled works shall be constructed in the lines or situations shown on the works plan and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraphs (5) to (8), the Council may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works, namely—

- (a) buildings on the stone pier, including or incorporating shops, reception areas, refreshment facilities, educational facilities and other facilities;
- (b) the provision of access to or from the scheduled works;
- (c) temporary or permanent landing places, jetties or moorings or other means of accommodating vessels in the construction or maintenance of the scheduled works;
- (d) buoys, beacons, fenders and other navigational warning or ship impact protection works;
- (e) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance, use or operation of the other authorised works; and
- (g) works for the benefit or protection of land affected by the authorised works.

(4) Subject to paragraph (6), the Council may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works.

(5) Paragraphs (3)(a), (f) and (g) shall only authorise the carrying out or maintenance of works within the limits of deviation.

(6) Paragraph (3)(b) and (4) shall only authorise the carrying out and maintenance of works on the stone pier.

(7) Paragraph (3)(c) and (d) shall only authorise the carrying out and maintenance of works within such part of the Order limits as lies below the level of mean high water springs.

(8) Paragraph (3)(e) shall only authorise the carrying out or maintenance of works within the Order limits.

**Power to deviate**

4.—(1) In constructing or maintaining any of the scheduled works, the Council may—

- (a) deviate laterally from the lines or situations shown on the works plan within the limits of deviation relating to that work shown on that plan; and
- (b) deviate vertically from the levels shown on the deposited sections—
  - (i) to any extent not exceeding 3 metres upwards; and
  - (ii) to any extent downwards as may be necessary or expedient.

(2) Without prejudice to the generality of paragraph (1), in constructing and maintaining Work No.1B the Council may, to the extent it thinks fit, deviate from the design of the bridge structure shown on the sections, including by varying the height or clearance above the level of the water underneath it.

### **Discharge of water**

5.—(1) The Council may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land shown on the works plan within the limits of deviation, make openings into, and connections with, the watercourse, sewer or drain.

(2) The Council shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) The Council shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) The Council shall 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 or oil or matter in suspension.

(5) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(1).

(6) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, a local authority or a harbour authority within the meaning of the Harbours Act 1964(2);
- (b) “watercourse” includes all rivers, tidal rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

### **Safeguarding works to stone pier**

6.—(1) Subject to the following provisions of this article the Council may at its own expense and from time to time carry out such safeguarding works to that part of the stone pier lying within the Order limits as the Council considers to be necessary or expedient.

(2) Safeguarding works may be carried out—

- (a) at any time before or during the construction, in the vicinity of the stone pier, of any part of the authorised works; or

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(1) 1991 c. 57.

(2) 1964 c. 40.

(b) after the completion of the construction of that part of the authorised works, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the Council may enter onto and survey any part of the stone pier falling within paragraph (1).

(4) For the purpose of carrying out safeguarding works under this article to the stone pier the Council may (subject to paragraphs (5) and (6))—

- (a) enter onto the stone pier; and
- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the stone pier, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out safeguarding works to the stone pier;
- (b) a right under paragraph (3) to enter onto the stone pier;
- (c) a right under paragraph (4)(a) to enter onto the stone pier; or
- (d) a right under paragraph (4)(b) to enter land,

the Council shall, 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 safeguarding works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the safeguarding works or to enter onto the stone pier or the land to be referred to arbitration under article 22.

(7) The Council shall compensate the owners or occupiers of any land in relation to which the powers of this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) safeguarding works are carried out under this article to the stone pier; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed within the vicinity of the stone pier is first opened for use, it appears that the safeguarding works are inadequate to protect the stone pier against damage caused by the construction or operation of that part of the works,

the Council shall compensate the owners and occupiers of the stone pier for any damage sustained by them.

(9) Without prejudice to article 20, nothing in this article shall relieve the Council from any liability to pay compensation under section 10(2) of the Act of 1965.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part I of the Act of 1961.

(11) In this article “safeguarding works”, in relation to the stone pier, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the stone pier by the construction, maintenance or operation of the authorised works; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the stone pier by the construction, maintenance or operation of the authorised works.

**Power to survey and investigate land, etc.**

- 7.—(1) The Council may, for the purposes of this Order—
- (a) survey or investigate any land within the Order limits;
  - (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the Council thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
  - (c) without prejudice to the generality of sub-paragraph (a), carry out archaeological and ecological investigations on any such land;
  - (d) take steps to protect or remove any flora or fauna on the land where the flora or fauna may be affected by the carrying out of the authorised works;
  - (e) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (d); and
  - (f) enter on the land for the purpose of exercising the powers conferred by sub paragraphs (a) to (e).
- (2) No land may be entered, or equipment placed or left on or removed from the land, under paragraph (1), unless at least 7 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 Council—
- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
  - (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) The Council shall pay compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in the case of dispute, under Part I of the Act of 1961.

**Obstruction of construction of works and misuse of works**

8. Any person who, without reasonable excuse—
- (a) obstructs another person from constructing any of the authorised works under the powers conferred by this Order;
  - (b) makes fast to any part of any tidal work;
  - (c) moors or operates any vessel within 5 metres (measured horizontally) of Work No. 1A or 1B;
  - (d) in any other way interferes with any of the authorised works,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Additional powers within tidal waters and tidal land**

- 9.—(1) Without prejudice to the other powers conferred by this Order or otherwise available to it, the Council may within so much of the Order limits as lies within tidal waters or tidal land below the level of mean high water springs, for the purposes of or in connection with the construction of the authorised works and notwithstanding any interference thereby with any public or private rights—
- (a) carry out excavations and clearance, dredging, deepening, dumping and pumping operations;

- (b) use, appropriate and dispose of any materials (including liquids but excluding any wreck within the meaning of Part IX of the Merchant Shipping Act 1995(3)) obtained by it in carrying out any such operations;
- (c) remove or relocate any moorings;
- (d) remove and relocate any vessel or structure sunk, stranded or abandoned or moored or left (whether lawfully or not);
- (e) temporarily moor or anchor vessels and structures;
- (f) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of the harbour;
- (g) construct, place, maintain and remove temporary works and structures,

in such manner and to such extent as may appear to it to be necessary or convenient.

(2) Except in the case of emergency, the Council will use its reasonable endeavours to notify the owner of any mooring and the owner or master of any vessel or structure affected by the proposal to exercise the powers of paragraph (1)(c) or (d) before the exercise of that power.

#### **Prohibitions within tidal waters and tidal land**

**10.**—(1) Notwithstanding anything in any other enactment or rule of law but subject to the provisions of this article, the Council may, after consulting the harbour master (if any), at any time when it appears to the Council necessary or desirable for the purposes of the construction of the authorised works, by direction close to navigation by all vessels or by any class of vessel the whole or any part of the area within so much of the Order limits as lies within tidal waters or tidal land below the level of mean high water springs.

(2) A direction under paragraph (1) shall specify the duration of the closure, the area affected and the vessel to which it applies.

(3) A person may not, without the written consent of the Council, within any part of the area within the Order limits, during a period when it is closed to navigation under this article—

- (a) navigate any vessel or cause or permit a vessel to be moored if the vessel concerned is subject to the closure;
- (b) lay down or place any mooring or apparatus, including mains, sewers, drains and cables; or
- (c) undertake or cause or permit any other operation or activity.

(4) Any person who contravenes the requirements of paragraph (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Except in an emergency, the Council shall publish notice of any direction given under paragraph (1) in a newspaper circulating in the District of Thanet not less than 14 days before the direction is to take effect.

(6) In giving a direction pursuant to paragraph (1), the Council shall ensure that no greater area is closed to navigation at any time by all vessels, or by any class of vessel, than is at that time necessary in the circumstances.

(7) A direction given under this article may be varied or revoked by a subsequent direction given under this article.

#### **Protection of navigation**

**11.** Schedule 2 to this Order shall have effect.

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(3) 1995 c. 21.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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