

MARINE MANAGEMENT ORGANISATION

PROPOSED MILFORD HAVEN (MARTELLO QUAYS) HARBOUR  
REVISION ORDER 2015

STATEMENT IN SUPPORT OF APPLICATION BY MARTELLO  
QUAYS LIMITED

## **1 INTRODUCTION**

- 1.1 This Statement relates to the application by Martello Quays Limited ("the Company") for the proposed Milford Haven (Martello Quays) Harbour Revision Order 2015 ("the HRO"). The Company is the lessor of the land at Pembroke Dock upon which the Company proposes to build and operate a new marina.
- 1.2 The application, made in a letter to the Marine Management Organisation ("the MMO") of today's date, is accompanied by –
- 1.2.1 A Draft of the proposed HRO;
  - 1.2.2 This statement; and
  - 1.2.3 The fee for the application, made payable to the MMO, in the sum of £4,000.
- 1.3 The application is for a harbour revision order to be made under the powers conferred on the Secretary of State for Transport by Section 14 of the Harbours Act 1964 (and delegated to the MMO with effect from 1<sup>st</sup> April 2010 by the Harbours Act 1984 (Delegation of Functions) Order 2010 (SI 2010/674)).

## **2 MILFORD HAVEN**

Milford Haven ("the Haven") is a very extensive natural haven in Pembrokeshire. It is extensively used by sea-going vessels as well as vessels which remain within the haven. It contains artificial docks for the oil and natural gas industry, for ferries to Ireland and for general cargo, fishing harbours at Pembroke Dock and Milford Haven town, as well as marinas at Milford Haven town and at Neyland, and yacht moorings at various locations.

Milford Haven ("the Harbour") is a harbour for which the Milford Haven Port Authority ("the Authority") is the harbour authority by virtue of the Milford Haven Conservancy Act 1983 (c. xix), the Milford Haven Port Authority Act 1986 (c. xx), the Milford Haven Port Authority Harbour Revision Order 2000 (S.I. 2000/2255).

The Harbour currently extends to all that area within Milford Haven up to mean high water springs, and therefore includes the area of the proposed marina.

## **3 THE PROPOSED MARINA**

The Company has obtained planning permission to develop a marina by impounding an area of the Haven at Pembroke Dock. The structure will comprise a retaining wall and lock, retaining the impounded water at near high water level. Floating mooring pontoons will then be anchored within the impounded area and moorings will be provided alongside the quays within the impounded area. The proposed marina will comprise a new artificial harbour and will comprise a significant improvement to facilities within the haven for sea-going vessels as well as vessels remaining within the haven.

The site comprises an area of water and foreshore below Mean High Water Springs, which is owned by the Crown Estate, from whom the Company have obtained an exclusive long lease granting them power to undertake the development and operation of the proposed marina, and various shore-side properties which the Company have acquired or are in the process of acquiring from Pembrokeshire County Council and a range of other owners. The area of water comprising the site of the structure and impounded water is shown on the plan attached to this Statement as Appendix One.

The Company propose to carry out the development as leaseholders of the land and are concurrently applying to the Welsh Assembly Government for marine works consent under Section 65 of the Marine and Coastal Access Act 2009.

Full Environmental Impact Assessments were required for the purpose of the planning application and for the marine works consent application.

## 4 THE HARBOURS ACT 1964

4.1 Section 14 of the Harbours Act 1964 ("the 1964 Act") confers powers which have been devolved to the MMO (see paragraph 1.3 above) to make an order under that Section (known as a harbour revision order) in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties for achieving all or any of the objectives specified in Schedule 2 to the 1964 Act.

4.2 Section 14 of the 1964 Act requires that written application must be made to the MMO by the harbour authority or by a person appearing to it to have a substantial interest or body representative of persons appearing to it to have such an interest, and that the MMO must be:

*"satisfied that the making of the order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships"*

4.3 The matters set out in Schedule 2 to the 1964 Act include, in particular –

4.3.1 at Paragraph 6:

*"Settling (either for all purposes or for limited purpose) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled."*

4.3.2 at paragraph 7B:

*"Extinguishing public rights of navigation for the purposes of works described in the order or works ancillary to such works, or permitting interference with the enjoyment of such rights for the purpose of carrying out by a person authorised by the authority to carry them out." And*

4.3.3 at paragraph 17:

*"any object which, though not falling within any of the foregoing paragraphs, appears to the (MMO) to be one the achievement of which will conduce to the efficient functioning of the harbour."*

4.4 Because this is not an application for a harbour revision order which, directly or indirectly, authorises a project (within the meaning in Paragraph 1 of Schedule 3 to the 1964 Act) prior notification to MMO under Paragraph 3(a) of Schedule 3 to the 1964 Act of the Company's intention to make the application is not required.

4.5 The application for the HRO under Section 14 of the 1964 Act meets the conditions set out therein. In particular, the application meets the requirements of:

4.5.1 Section 14(1) of the 1964 Act because it is made in relation to a harbour which is being improved, maintained and managed by a harbour authority in the exercise of its statutory powers and duties for the purpose of achieving objects falling within Schedule 2 to the 1964 Act;

4.5.2 Section 14(2) of the 1964 Act because:

(a) it is made upon the written application to (MMO) of a person appearing to (MMO) to have a substantial interest; and

- (b) The making of the HRO is desirable in the interests of securing the improvement, maintenance and management of the harbour in an efficient and economical manner and in the interests of the recreational use of sea-going ships.

## **5 NEED AND JUSTIFICATION FOR HRO**

5.1 The Haven is a large and sheltered harbour which:

5.1.1 provides a large and sheltered area for recreational sailing by ships of all sizes and has a number of well-used marinas, anchorages and other facilities for such recreational ships; and

5.1.2 provides a convenient refuge and base for recreational ships passing along the south and west coasts of Wales and to and from such destinations as Cornwall, the Bristol Channel, the western coast of Wales and Ireland.

5.2 The demand for secure marina facilities for recreational ships of all sizes either based in or visiting the Haven is increasing, and the Company has applied for and obtained planning permission for the construction of the proposed marina to provide a "floating harbour" in which vessels may remain afloat at all states of the tide, within the area enclosed from the tidal haven by a retaining wall and lock. The marina will provide a valuable addition to local amenity which will be an improvement to the Haven and provide a safe and convenient haven for the recreational use of sea-going ships.

5.3 An explanation of, and the need for, each substantive article in the HRO is set out below together with the relevant power in the Harbours Act 1964 by virtue of which the article may be included in an HRO.

### **5.4 Article 3 – Power to interfere with and extinguishment of rights of navigation**

5.4.1 The Article provides that, after the date on which the HRO comes into force the Company and any person authorised by the Company may within the Haven interfere with the enjoyment of any right of navigation to the extent only that such interference is necessary for the purposes of constructing, using and maintaining the Authorised Works, and that, on completion of the construction of the authorised works, any right of navigation or other public rights over the Boat Harbour shall be extinguished.

5.4.2 Article 2 defines –

- (a) the Authorised Works to mean the works authorised by the Marine Licence, and shown cross-hatched in blue on the plan attached to the HRO
- (b) the Boat Harbour to mean the area comprising the Authorised Works and the Enclosed Area;
- (c) the Enclosed Area to mean the area to be enclosed by the authorised works up to the level of mean high water springs, and shown hatched in blue on the plan attached to the HRO; and
- (d) the Marine Licence to mean, once granted, the marine licence for which the Company have made application to the Welsh Assembly Government under Section 71 of the Marine and Coastal Access Act 2009 in respect of works comprising the construction of a marina outer containment wall and lock at Pembroke Dock in the Haven.

### **5.5 Relevant Provision in Schedule 2 of the Harbours Act 1964**

Paragraph 7B of Schedule 2 to the Harbours Act 1964 (as inserted by Section 63(1) and Schedule 3 Paragraph 9(3) of the Transport and Works Act 1993) provides that the following shall be one of the objects for whose achievement a Harbour revision order may be made:

"Extinguishing public rights of navigation for the purposes of works described in the order or works ancillary to such works, or permitting interference with the enjoyment of such rights for the purposes of such works or for the purposes of works carried out by a person authorised by the authority to carry them out."

## 5.6 **Need for Provision**

The area of the proposed marina, comprising the area of the Authorised Works and the Retained Area, lies below the high water mark within the tidal waters of the Haven and, as such, is subject to a public right of navigation. Without authorisation to interfere with such right of navigation during the construction of the marina and the extinguishment of the public right of navigation once the marina is completed, by virtue of Article 3 construction, maintenance and use of that marina, lock and retaining wall would be an unlawful obstruction of the public right of navigation. If the public retained a right of navigation over this area, it would also be very difficult for the Company to control and regulate vessels entering, leaving and using the marina so as to enable the marina to be used in a safe, effective and efficient manner.

## 5.7 **Article 4 – Removal and Disposal of unlicensed vessels, moorings, etc.**

5.7.1 The Article provides as follows -

"(1) After the date on which this Order comes into force, the Company may remove any vessel, mooring or other thing within the haven which is causing or likely to become an obstruction or impediment to the proper construction of the authorised works.

(2) After the completion of the construction of the authorised works, the Company may remove any vessel, mooring or other thing within the Boat Harbour which is causing or likely to become an obstruction or impediment to the proper use of the Boat Harbour.

(3) Where the Company removes anything in accordance with paragraph (1) or (2), and the thing is not marked or readily identifiable as the property of any person, the Company shall upon removal place the thing in a secure area and shall cause a notice to be placed in a newspaper circulating in the locality, listing every such vessel, mooring or thing which has been so removed and inviting its owners to retake it from that secure area.

(4) If anything so removed is known to the Company to be, or is marked so as to be readily identifiable as, the property of any person, the Company must, within 28 days of its coming into their custody, give notice in accordance with paragraph (5) to that person.

(5) A notice given under paragraphs (3) or (4) must specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the Company possession may be taken at a place and time specified in the notice, being not less than 28 days after the date when the notice is served.

(5) If the thing is not collected by the owner within three months of the publication of notice under paragraph (3) or (4), it will vest in the Company.

(6) The Company may, at such time and in such manner as they think fit, dispose of anything which is of a perishable or obnoxious nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Company under this article, and if it is sold the proceeds of sale will be applied by the Company in payment of the expenses incurred by them under this article in relation to the thing, and any balance—

(a) must be paid to any person who within three months from the time when the thing came into the custody of the Company proves to the reasonable satisfaction of the Company ownership of that thing at that time; or

(b) if within the relevant period no person proves ownership, it will vest in the Company.

(7) If anything removed under this article is sold by the Company and within a period of 3 years from the date of service or publication of notice under Paragraph (2) or (3) in respect of that vessel, mooring or thing the owner thereof proves his ownership to the satisfaction of the Company, the Company shall account to him for any proceeds of sale, less the expenses incurred by the Company in the exercise of their powers of removal and sale thereof.

(8) The Company must not under the powers of this article remove any vessel, mooring or thing placed or constructed by any person under the provisions of any consent or licence given or issued by the Authority."

5.7.2 Article 2 defines –

- (a) the Authorised Works to mean the works authorised by the Marine Licence, and shown cross-hatched in blue on the plan attached to the HRO
- (b) the Boat Harbour to mean the area comprising the Authorised Works and the Enclosed Area;
- (c) the Enclosed Area to mean the area to be enclosed by the authorised works up to the level of mean high water springs, and shown hatched in blue on the plan attached to the HRO; and
- (d) the Marine Licence to mean, once granted, the marine licence for which the Company have made application to the Welsh Assembly Government under Section 71 of the Marine and Coastal Access Act 2009 in respect of works comprising the construction of a marina outer containment wall and lock at Pembroke Dock in the Haven.

## **5.8 Relevant Provision in Schedule 2 of the Harbours Act 1964**

Paragraph 17 of Schedule 2 to the Harbours Act 1964 (as inserted by Section 63(1) and Schedule 3 Paragraph 9(3) of the Transport and Works Act 1993) provides that the following shall be one of the objects for whose achievement a Harbour revision order may be made:

"Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour."

## **5.9 Need for Provision**

- 5.10 The Company has no rights to interfere with or remove private property in order to construct, maintain or operate the proposed marina
- 5.11 The Authority has issued licenses for the laying and use of moorings within the area of the proposed marina, but these licenses can be terminated and the licensees required to remove such moorings by the Authority at the request of the Company, prior to the start of construction of the proposed marina.
- 5.12 From observation and correspondence the Company is aware that some persons other than licensees from the Authority either have or claim to have the right to lay and use moorings within the area of the proposed marina. The Company needs to have the power to remove such un-licensed moorings and vessels in order to be able to construct, maintain and operate the proposed marina lawfully, without unlawful interference with private property.
- 5.13 The Company intends that the new marina shall not be securely fenced from surrounding land including the public highway, and that the Company will maintain the tradition of access to the Haven in the area of the proposed Marina by permitting and facilitating access to the enclosed area by members of the public via a new and improved slipway, and thence via the lock to the Haven. Whilst the Company will require users of berths within the proposed marina to enter berthing contracts with

the Company under which the Company may, if necessary, relocate or remove vessels within the lock and the enclosed area, there will be some vessels which have entered the lock or enclosed area but whose owners have not, or have not yet, entered berthing contracts with the Company. The Company needs to have the power to relocate or remove such vessels if they interfere with or prevent the safe and efficient use of the proposed marina.

- 5.14 Articles 4(3) to 4(7) require the Company to publicise, and give notice to the owners of, any vessel or other object removed under this Article and, if the owner cannot be ascertained or fails to claim and remove that vessel or object, enable the Company to sell or dispose of any such vessels or objects removed under the foregoing provisions, and provide protection for owners in a right to receive any proceeds of such sale.

#### **5.15 Article 5 - Installation and operation of directional and holding buoys**

Article 5 provides as follows:

"(1) The Company may request the Authority to provide, place, lay down, maintain, renew, or remove within the Haven in proximity to the authorised works —

(a) buoys and other markers for the guidance of vessels seeking to enter or leave the Boat Harbour; and

(b) holding buoys, jetties and pontoons for use by vessels waiting to enter the Boat Harbour;

as the Company consider necessary or desirable for the convenience of vessels.

(2) The Authority and the Company may require any person using a holding buoy, jetty or pontoon for any purpose other than waiting to take a vessel into the Boat Harbour at the next available opportunity to remove the vessel immediately."

#### **5.16 Relevant Provision in Schedule 2 of the Harbours Act 1964**

Paragraph 17 of Schedule 2 to the Harbours Act 1964 (as inserted by Section 63(1) and Schedule 3 Paragraph 9(3) of the Transport and Works Act 1993) provides that the following shall be one of the objects for whose achievement a Harbour revision order may be made:

"Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour."

#### **5.17 Need for Provision**

- 5.18 The installation of directional marker buoys outside the entrance to the new lock entrance to the marina will assist vessels entering and leaving the lock to do so safely, with minimum interference to other marine traffic within the Haven.
- 5.19 Holding buoys near the entrance to the lock entrance to the marina will enable vessels seeking to access the marina at times or states of the tide when the lock is not operating to hold station outside the lock, but in a location which does not interfere with other marine traffic in the Haven, and will also provide a safe and secure holding station in bad weather. As such, the installation of such buoys and directional marker buoys will contribute to the safe and efficient operation of both the new marina and the Haven,
- 5.20 The area in which such directional marker and holding buoys would be located is outside the area owned and controlled by the Company, but within the area of jurisdiction of the authority. The Authority has the power to install or authorise the installation of such directional marker and holding buoys under, inter alia, Section 77 of the Harbours, Docks and Piers Clauses Act 1847, so it is proposed that the Company should make application to the Authority to install or license the Company to install such buoys.

5.21 However, if such buoys are misused, for example by vessels mooring to them for longer than is necessary to enter the marina, it would be necessary to require the owners to remove, and if the owners fail to remove then for the Authority and/or the Company to remove such vessels to enable the continued safe and efficient use and operation of both the marina and the Haven.

5.22 **Part 3 – Provisions for the Protection of the Haven**

5.23 Part 3 of the HRO provide as follows:

**"Survey of authorised works**

6.- (1) The Welsh Ministers may at any time if they deem it expedient order a survey and examination of a tidal work or a site upon which it is proposed to construct the work and any expense incurred by him in such a survey and examination shall be recoverable from the Company as a debt.

**Provision against danger to navigation**

7.—(1) In the case of injury to, or destruction or decay of, a tidal work or any part of it, the Company must as soon as reasonably practicable notify Trinity House and the Authority and must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House or the Authority may from time to time direct.

(2) Subject to article 12 (defence of due diligence), if the Company fails to notify Trinity House or the Authority as required by paragraph (1) or to comply in any respect with a direction given under that paragraph, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

(3) The Company shall not operate the authorised works so as to enable any vessel to enter or leave any part of the authorised works in respect of which there is in force any direction given under paragraph (1).

**Abatement of works abandoned or decayed**

8.—(1) Where a tidal work is abandoned or has fallen into decay the Welsh Assembly Government may by notice in writing require the Company at its own expense to either repair and restore the work or any part of it, or remove the work and restore the site of the tidal work to its former condition, to such an extent and within such limits as the Welsh Ministers thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or has fallen 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 to cause reasonable apprehension that it may interfere, with the right of navigation or other public rights over the foreshore, the Welsh Ministers may include that part of the work or any portion of it, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Company, it has failed to comply with the requirements of the notice, the Welsh Ministers may execute the works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Company as a debt.

**Lights on tidal works during construction**

9.—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work the Company must at the outer extremity of that work every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation, as Trinity House or the Authority may from time to time direct.

(2) Subject to article 12, if the Company fails to comply in any respect with a direction given under paragraph (1) it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.



### **Permanent lights on authorised works**

10.—(1) After completion of a tidal work the Company must at the outer extremity of the work every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation, as Trinity House [or the Authority] may from time to time direct.

(2) Subject to article 12, if the Company fails to comply in any respect with a direction given under paragraph (1) it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine."

### **5.24 Relevant Provision in Schedule 2 of the Harbours Act 1964**

Paragraph 17 of Schedule 2 to the Harbours Act 1964 (as inserted by Section 63(1) and Schedule 3 Paragraph 9(3) of the Transport and Works Act 1993) provides that the following shall be one of the objects for whose achievement a Harbour revision order may be made:

"Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour."

### **5.25 Need for Provision**

These provisions are required by the Authority to ensure that the proposed marina is constructed, maintained and operated in a manner which does not give rise to any danger to vessels in the Haven, and to give the Authority powers to address, or require the Company to address, any actual or potential dangers.

### **5.26 Article 11 - Alteration of Limits of Haven**

Article 11 provides as follows:

- "(1) 28 days after the Completion Date, so much of the Haven as lies within the Boat Harbour shall cease to form part of the Haven.
- (2) Subject to paragraph (3), on and after the completion date, the area which was formerly part of the Haven as described in paragraph (1) shall cease to form part of the Authority's harbour undertaking and, in respect of that area—
  - (i) the Authority shall cease to exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964( ), and
  - (ii) the powers of the harbour master shall cease to be exercisable.
- (3) On or after the completion date, the Company must publish a notice explaining the effect of this article in the London Gazette and in at least one local newspaper circulating in the area in which the authorised works are situated."

### **5.27 Relevant Provision in Schedule 2 of the Harbours Act 1964**

Paragraph 6 of Schedule 2 to the Harbours Act 1964 (as inserted by Section 63(1) and Schedule 3 Paragraph 9(3) of the Transport and Works Act 1993) provides that the following shall be one of the objects for whose achievement a Harbour revision order may be made:

"Settling (either for all purposes or for limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled."

### **5.28 Need for Provision**

Upon completion the proposed marina will comprise an area of enclosed water, separated from the rest of the Haven by a lock and retaining wall, access to and from the rest of the Haven being controlled by the Company through its control of the lock. The Company will operate the marina as a commercial entity.

As such, the marina will operate independently of the rest of the Haven, save in respect of the other provisions of this HRO. There will therefore be no reason for the Authority to retain jurisdiction over the new marina as if it were a part of the open Haven, and the efficient commercial operation of the marina requires that the Company have freedom to operate the marina commercially in fair competition with other marinas within the Haven;. Accordingly the HRO provides that, upon completion, the area of the marina shall be taken out of the limits of the jurisdiction of the Authority.

### **5.29 Article 12 – Defence of Due Diligence**

Article 12 provides as follows:

- "(1) In proceedings for an offence under any of the provisions mentioned in paragraph (2) it shall be a defence for the Company to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (2) The provisions referred to in paragraph (1) are—
- (a) article 7 (provision against danger to navigation);
  - (b) article 9 (lights on tidal works during construction); and
  - (c) article 10 (permanent lights on tidal works).
- (3) If in any case the reliance on the defence provided by paragraph (1) 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, before the period of 7 clear days preceding the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession."

### **5.30 Relevant Provision in Schedule 2 of the Harbours Act 1964**

Paragraph 17 of Schedule 2 to the Harbours Act 1964 (as inserted by Section 63(1) and Schedule 3 Paragraph 9(3) of the Transport and Works Act 1993) provides that the following shall be one of the objects for whose achievement a Harbour revision order may be made:

"Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour."

### **5.31 Need for Provision**

The HRO places obligations on the Company to take measures for the safety of vessels within the Haven, and therefore gives the Company potential liability in the event that any such provision fails. That failure may be for reason outside the control of the Company, such as storm damage or collision by a vessel not under the control of the Company. This provision ensures that the Company does not have strict liability in the event of such failure, but provides a reasonable level of liability by providing a defence of due diligence for the Company.

### **5.32 Article 13 - Saving for Trinity House**

Article 13 provides as follows:

"Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House."

### **5.33 Relevant Provision in Schedule 2 of the Harbours Act 1964**

Paragraph 17 of Schedule 2 to the Harbours Act 1964 (as inserted by Section 63(1) and Schedule 3 Paragraph 9(3) of the Transport and Works Act 1993) provides that the following shall be one of the objects for whose achievement a Harbour revision order may be made:

"Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour."

### **5.34 Need for Provision**

The provision ensures that this HRO does not prejudice or derogate from the rights duties and privileges of Trinity House in discharging its functions in respect of marine safety.

### **5.35 Article 14 - Crown Rights**

Article 14 provides as follows:

- (1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to that generality, nothing in this Order authorises the Company or any licensee to take, use, enter upon or in any manner interfere with, any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any haven, channel, creek, bay or estuary)—
  - (a) belonging to Her Majesty in right of the Crown and forming part of the Crown estate without the consent in writing of the Crown Estate Commissioners;
  - (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown estate without the consent in writing of the government department having the management of that land; or
  - (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.
- (2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and shall be deemed to have been given in writing where it is sent electronically."

### **5.36 Relevant Provision in Schedule 2 of the Harbours Act 1964**

Paragraph 17 of Schedule 2 to the Harbours Act 1964 (as inserted by Section 63(1) and Schedule 3 Paragraph 9(3) of the Transport and Works Act 1993) provides that the following shall be one of the objects for whose achievement a Harbour revision order may be made:

"Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour."

### **5.37 Need for Provision**

This provision makes it clear that the powers granted to the Company by this HRO do not prejudice the position of the Crown as freehold owner of the land below High Tide Mark upon which the proposed marina will be constructed.

### 5.38 Article 15 and the Schedule – For the Protection of the Authority

Article 15 provides that the Schedule to the HRO shall apply. The Schedule provides as follows:

- 1." In this Schedule—
  - “accumulation” means any accumulation of silt or other material which constitutes an impediment to navigation;
  - “construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, and “construct” and “constructed” shall be construed accordingly;
  - “erosion” means any erosion of the bed or banks of the haven or any jetty or other structure of whatever nature owned or occupied by the Authority; and
  - “plans” includes sections, descriptions, drawings and specifications.
2. The Company shall give to the Authority not less than 14 days’ written notice of its intention to commence the construction of a tidal work not more than 14 days after completion of such construction, shall give to the Authority written notice of such completion.
3. The Company shall at all reasonable times during construction of the works and after then allow the Authority, its servants and agents, access to the works and all reasonable facilities for inspection of any tidal work.
4. After the purpose of any temporary works has been accomplished the Company shall with all reasonable dispatch, or after a reasonable period of notice in writing from the Authority requiring the Company so to do, remove any such temporary works or any materials relating to them which may have been placed below the level of high water by or on behalf of the Company; and, on failing to so do within a reasonable period after receiving such notice, the Authority may remove them and may recover the reasonable costs of doing so from the Company.
5. (1) If, during the construction of a tidal work or within 10 years after the completion of that work and wholly or partly in consequence of its construction, there is caused or created an accumulation or erosion which prejudices or, if it continued, would be likely to prejudice the effective operation of or safety of navigation in the Haven, the Company, if so requested by the Authority acting reasonably before or within the period of 19 years after such completion or exercise, shall remedy such accumulation or erosion to the extent attributable to such construction or exercise of powers in the manner specified in sub-paragraph (3) and, if the Company refuses or fails to do so within a reasonable period, the Authority may itself cause the work to be done and may recover the reasonable cost of doing so from the Company.
- (2) If any accumulation or erosion in consequence of such construction arises within the said period of 10 years and is remedied in accordance with sub-paragraph (3), any recurrence of such accumulation or erosion which prejudices or, if it continued, would be likely to prejudice the effective operation of the Haven, shall from time to time be so remedied by the Company during the said period of 10 years and at any time thereafter, save that the Company’s obligation under this paragraph shall cease if following the remedying of any accumulation or erosion, a period of 10 years elapses without any further accumulation or erosion being caused in consequence of such construction or exercise.
- (3) For the purposes of sub-paragraphs (1) and (2) above—
  - (a) in the case of an accumulation, the remedy shall be its removal; and
  - (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be necessary.
- (4) In the event that surveys, inspection, tests and sampling carried out pursuant to paragraph 7(1)(b) of this Schedule establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a

tidal work, the Company shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise.

- (5) For the purposes of sub-paragraph (1) the date of completion of a work shall be the date on which it is brought into use.

**6.** The Company shall—

- (c) pay to the Authority the reasonable costs of such alterations to the marking and lighting of the navigational channel of the haven as may be necessary during or in consequence of the construction of a tidal work;
- (d) provide and maintain on any tidal work such fog-signalling apparatus as may be reasonably required by the Authority and properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of those works; and
- (e) afford to the Authority such facilities as it may reasonably require for the placing and maintenance on any tidal work of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

**7.** (1) Without prejudice to the other provisions of this Schedule, the Company shall be responsible for, and make good to the Authority, all losses, costs, charges, damages and expenses however caused (including a reasonable and proper proportion of the overhead charges of the Authority) which may reasonably be incurred by or occasioned to the Authority by reason of or arising from or in connection with—

- (a) the perusal of plans and the inspection of any of the tidal works by the Authority or its duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within and of the haven (including its bed and banks)—
  - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the haven as the Authority has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the Company is liable to remedy under paragraph 6; and
  - (ii) where the Authority has reasonable cause to believe that the construction of any of the tidal works is causing or has caused any accumulation or erosion as aforesaid;
- (c) the construction of any of the tidal works, the failure of any of the tidal works or the undertaking by the Authority of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of the Authority arising from such construction, exercise or failure;
- (d) any act or omission of the Company or their servants or agents whilst engaged in the construction of any of the tidal works.

- (2) Without prejudice to the generality of sub-paragraph (1), the Company shall indemnify the Authority from and against all claims and demands arising out of, or in connection with, such construction, exercise, failure or act or omission as is mentioned in that sub-paragraph.

- (3) Nothing in this paragraph shall impose any liability on the Company to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraphs (1) or (2) is attributable to negligence on the part of the Authority or of any person in its employ or of its contractors or agents.
- (4) The Authority shall give to the Company notice in writing of any 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.** The fact that any work or thing has been executed or done with the consent of the Authority and in accordance with any conditions or restrictions prescribed by the Authority or in accordance with plans approved or deemed to be approved by the Authority or to its satisfaction or in accordance with any directions or award of any arbitrator or in accordance with any plans approved by the [Welsh Ministers][Secretary of State] and any conditions or

restrictions imposed by him, shall not relieve the Company from any liability under the provisions of this Schedule.

9. With the exception of any duty owed by the Authority to the Company expressly provided for in the foregoing provisions of this Schedule, nothing in this Order shall be construed as imposing upon the Authority, either directly or indirectly, any form of duty or liability to which the Authority would not otherwise be subject which is enforceable by proceedings before any court.
10. Nothing in this Order shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the Authority or the harbourmaster at the commencement of this Order or any title of the Authority in, to or over any lands or foreshore held or acquired by it.
11. Any difference arising between the Company and the Authority under this Schedule shall be determined by arbitration."

#### 5.36 **Relevant Provision in Schedule 2 of the Harbours Act 1964**

Paragraph 17 of Schedule 2 to the Harbours Act 1964 (as inserted by Section 63(1) and Schedule 3 Paragraph 9(3) of the Transport and Works Act 1993) provides that the following shall be one of the objects for whose achievement a Harbour revision order may be made:

"Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour."

#### 5.39 **Need for Provision**

These provisions are required by the Authority to ensure that it can require the Company to address at its own expense any consequences of the construction and operation of the marina which might be detrimental to the safe and efficient operation of the Harbour, particularly in the event that the construction of the marina causes siltation within the Harbour.

Bevan Brittan LLP

For and on behalf of Martello Quays Limited