

1999 No. 2400

TRANSPORT AND WORKS, ENGLAND

**The Gosport Borough Council (Forton Lake Opening Bridge)
Order 1999**

Made - - - - - *20th July 1999*

Coming into force *10th August 1999*

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SCHEDULE — The Scheduled Works

Whereas an application has been made to the Secretary of State for the Environment, Transport and the Regions ("the Secretary of State"), in accordance with the Transport and Works (Applications and Objections Procedure) Rules 1992(a) made under sections 6, 7 and 10 of the Transport and Works Act 1992(b) ("the Act"), for an Order under sections 3 and 5 of the Act;

(a) S.I. 1992/2902.

(b) 1992 c. 42.

And whereas the Secretary of State is of the opinion that the primary object of this Order cannot be achieved by means of an Order under the Harbours Act 1964(a);

And whereas the Secretary of State received no objections to that application;

And whereas the Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change in the proposals;

And whereas notice of the Secretary of State's determination was published in the London Gazette on 19th July 1999;

Now, therefore, the Secretary of State in exercise of the powers conferred on him by sections 3 and 5 of, and paragraphs 1, 2, 7, 8, 10, 13, 15 and 17 of Schedule 1 to, the Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Gosport Borough Council (Forton Lake Opening Bridge) Order 1999 and shall come into force on 10th August 1999.

Interpretation

2.—(1) In this Order—

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992;

“the authorised works” means the scheduled works and any other works authorised by this Order;

“the bridge” means Work No. 2 referred to in the Schedule to this Order;

“the Council” means the Council of the borough of Gosport;

“the deposited plans” means the plans described in rule 7(1)(a) of the Applications Rules prepared in connection with the application for this Order and certified by the Secretary of State as “the plans” for the purposes of this Order;

“the deposited sections” means the sections described in rule 7(2) of the Applications Rules prepared in connection with the application for this Order and certified by the Secretary of State as “the sections” for the purposes of this Order;

“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 plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

“Queen's Harbour Master” means the person appointed to be Queen's Harbour Master of the Dockyard Port of Portsmouth under the Dockyard Ports Regulation Act 1865(b);

“the scheduled works” means the works specified in the Schedule to this Order;

“tidal work” means so much of any work authorised by this Order as is in, 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 every description of vessel with or without means of propulsion of any kind and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on or by water, a seaplane on or in the water and a hovercraft within the meaning of the Hovercraft Act 1968(c).

(2) References in this Order to reference points shall be construed as references to Ordnance Survey National Grid Reference points.

(3) All directions, distances and reference points stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after such direction, distance and reference points.

(a) 1964 c. 40.

(b) 1865 c. 125.

(c) 1968 c. 59.

Power to construct etc. works

3.—(1) The Council may construct and maintain the scheduled works and for the purposes of constructing those works the Council may demolish and remove the derelict bridge which lies within the limits of deviation at the date of the making of this Order.

(2) Subject to article 4 below, the scheduled works shall be constructed in the lines and situations, within the limits of deviation and in accordance with the levels shown on the deposited sections.

(3) The Council may operate the bridge and 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) works to install, or alter the position of, apparatus, including mains, sewers, drains and cables, and
- (b) works for the benefit or protection of premises affected by the scheduled works.

Power to deviate

4. In the construction or maintenance of the scheduled works, the Council may deviate laterally from the lines or situations shown on the deposited plans to any extent within the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding—

- (a) 3 metres upwards as to any part of the scheduled works,
- (b) 1 metre downwards as to the decking of the bridge, and

to any extent downwards as to any other part of the scheduled works.

Power to make subsidiary works

5. Subject to the provisions of this Order the Council may from time to time within the limits of deviation or on any land vested in the Council at the date of the making of this Order, construct and maintain, whether temporarily or permanently, all such works as may be requisite or expedient for the purposes of, or in connection with, the construction, maintenance and use of the scheduled works.

Drainage of authorised works

6.—(1) The Council may use Forton Lake for the drainage of water in connection with the construction or maintenance of the authorised works.

(2) This article does not dispense with the need for any consent required by any of the water pollution provisions of the Water Resources Act 1991^(a) in relation to any discharge in connection with the construction or maintenance of the authorised works or affect any powers of the Environment Agency under any of those provisions.

Temporary closing of Forton Lake in connection with works

7.—(1) Notwithstanding anything in any other enactment or in any rule of law, the Council may temporarily close Forton Lake, or any part thereof, to navigation in the course of executing any works or doing anything authorised by or under this Order.

(2) In exercise of the powers conferred by paragraph (1) above—

- (a) the Council shall execute such works or do such things as may be required to ensure that at any time no more of Forton Lake is closed than is reasonably necessary in all the circumstances, and

^(a) 1991 c. 57.

- (b) should it be necessary at any time to close the whole of Forton Lake to navigation, the Council shall use its best endeavours to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use Forton Lake.
- (3) Before exercising the power conferred by paragraph (1) above the Council shall–
 - (a) publish a notice of its intention to do so in Lloyds List and once in each of two successive weeks in a local newspaper published or circulating in the borough of Gosport, with an interval between the dates of publication of not less than 6 clear days, and
 - (b) display notice of its intention in a conspicuous position adjacent to Forton Lake.
- (4) Each of the notices required by paragraph (3) above shall–
 - (a) state that the Council intends to execute the works or to do anything authorised by or under this Order (as the case may be) and for that purpose to close temporarily Forton Lake or such part of Forton Lake as is specified in the notice to navigation, and
 - (b) specify a date, which shall be a date not earlier than 14 days after the last date on which a notice is published pursuant to paragraph (3)(a) above and the duration of the closure.

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

8.—(1) A tidal work shall not be constructed, 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.

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

- (a) the Secretary of State may by notice in writing require the Council at its own expense to remove the tidal work 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 Council, it has 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 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 Council.

Lights on tidal works

9.—(1) The Council shall at or near a tidal work during the whole time of the construction, alteration, replacement or relaying 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 the Secretary of State after consulting the Queen’s Harbour Master shall from time to time direct.

(2) If the Council fails to comply with any requirement of a direction given under paragraph (1) above, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Provision against danger to navigation

10.—(1) In the case of injury to, or destruction or decay of, a tidal work the Council shall as soon as reasonably practicable notify Trinity House and the Queen’s Harbour Master and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House after consulting the Queen’s Harbour Master may from time to time direct.

(2) If the Council fails to notify Trinity House as required by paragraph (1) above or to comply with any requirement of a direction under it, the Council shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Abatement of works abandoned or decayed

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

(2) Where—

- (a) 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 suffered to fall into decay, and
- (b) that part of the work on or over land above the level of high water is in such a 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 Secretary of State may include that part of the work, or any portion thereof, in any notice under paragraph (1) above.

(3) If, at the end of 30 days from the date when a notice under this article is served upon the Council, it has failed to comply with the requirements of the notice, the Secretary of State may execute the work specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Council.

Survey of tidal works

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

Permanent lights on tidal works

13.—(1) After the completion of a tidal work the Council shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as Trinity House after consulting the Queen's Harbour Master may from time to time direct.

(2) If the Council fails to comply in any respect with a direction given under this article, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Certification of plans, etc.

14. The Council shall, as soon as practicable after the making of this Order, submit copies of the deposited plans and deposited sections to the Secretary of State for certification that they are true copies of, respectively, the plans and sections referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Opening of bridge

15.—(1) The Council shall, whenever it considers it necessary or desirable so to do for the purpose of ensuring that the bridge shall be opened when reasonably required to permit navigation under the bridge, consult with such persons or bodies (or their representatives) as appear to it to be likely to wish from time to time to navigate under the bridge.

(2) The Council shall post and maintain notices in the vicinity of the bridge stating the times when and periods during which the bridge may be opened for navigation and the steps which the master of a vessel shall take to ensure that the bridge is opened for the passage of his vessel.

(3) When preparing the notices referred to in paragraph (2) above, the Council shall have regard to any representations made to it by the persons or bodies consulted pursuant to paragraph (1) above.

Obstruction of authorised works and misuse of bridge

16. Any person who without lawful authority or excuse—

- (a) obstructs another person from constructing any of the authorised works,
- (b) closes or opens the bridge, or
- (c) in any other way interferes with the bridge or the operation thereof,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Removal of vessels for purposes of construction or maintenance of authorised works

17.—(1) If it appears to the Council necessary or convenient to do so for the purposes of the construction or maintenance of the authorised works, it may, having first consulted the Queen’s Harbour Master, remove any vessel that is—

- (a) sunk, stranded or abandoned within the limits of deviation, or
- (b) moored or left there (whether lawfully or not),

either to another place within those limits or to a place outside those limits where it may without injury to the vessel be moored or laid.

(2) Before exercising the powers conferred by paragraph (1) above the Council shall—

- (a) publish a notice of its intention to do so in Lloyds List and once in each of two successive weeks in a local newspaper published or circulating in the borough of Gosport, with an interval between the dates of publication of not less than 6 clear days, and
- (b) display notice thereof in a conspicuous position adjacent to Forton Lake.

(3) Each of the notices shall—

- (a) state that the Council intends to construct or maintain (as the case may be) the authorised works, and
- (b) specify a date, which shall be a date not earlier than one month after the last date on which a notice is published pursuant to paragraph (2)(a) above, by which all vessels must be removed from within the limits of deviation.

(4) If the master of any vessel within the limits of deviation does not remove that vessel from within those limits before the date specified in accordance with paragraph (3)(b) above, the Council may, having first consulted the Queen’s Harbour Master, cause that vessel to be removed.

(5) The Council may recover as a debt from the owner of any vessel removed pursuant to paragraph (4) above all expenses incurred by the Council in respect of its removal.

Removal of vessels from restricted area

18.—(1) If it appears to the Council necessary or convenient to do so for the purpose of enabling vessels to navigate through the restricted area, the Council may, after consulting the Queen’s Harbour Master, remove any vessel moored or abandoned within the restricted area to another place outside the restricted area where it may without injury be moored or laid.

(2) In this article “restricted area” means a quadrilateral within Forton Lake whose sides are formed by the intersection of the following lines:—

- (a) a line due south of the mooring pile, forming part of Work No. 3B, nearest to the bridge on its eastern side;
- (b) a line due north of the mooring pile, forming part of Work No. 3A, nearest to the bridge on its western side;
- (c) a line extending through the guide piles on the south side of the opening span of the bridge between reference point SU461680100920 and reference point SU461738100926;
- (d) a line extending through the guide piles on the north side of the opening span of the bridge between reference point SU461680100930 and reference point SU461738100938.

Removal of obstructions

19. If any obstruction is caused to the operation of the opening mechanism of the bridge by any object left on the bridge or within the limits of deviation, the person in charge of the object shall remove it forthwith; and if he fails to do so the Council may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

- (a) any person by whom the object was put or left so as to become an obstruction to the operation of the bridge, or

- (b) any person who was the owner of the object at that time unless he shows that he was not, at that time, concerned in or aware of the object being so put or left.

Power to make byelaws

20.—(1) The Council may make byelaws regulating the use and operation of the bridge and the conduct of all persons passing over the bridge or of all vessels passing through the opening span thereof or otherwise navigating or mooring within the limits of deviation.

(2) Without prejudice to the generality of paragraph (1) above, byelaws made under this article may make provision—

- (a) with respect to interference with, or obstruction of, the operation of the bridge,
- (b) for prohibiting or restricting the placing or leaving of any object on any part of the bridge, and
- (c) for prohibiting any vessel from mooring alongside any part of the bridge.

(3) Byelaws made under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Byelaws made under this article shall not come into operation until they have been confirmed by the Secretary of State.

(5) At least 28 days before applying for any byelaws to be confirmed under this article the Council shall publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the time during which a copy of the byelaws will be open to public inspection; and any person affected by any of the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days.

(6) For at least 24 days before an application is made under this article for byelaws to be confirmed a copy of the byelaws shall be kept at the principal office of the Council and shall at all reasonable hours be open to public inspection without payment.

(7) The Council shall at the request of any person supply him with a copy of any such byelaws on payment of such reasonable sum as the Council may determine.

(8) The Secretary of State may confirm with or without modification, or may refuse to confirm, any of the byelaws submitted under this article for confirmation and, as regards any byelaws so confirmed, may fix a date on which the byelaws shall come into operation; and if no date is so fixed the byelaws shall come into operation after the expiry of 28 days from the date on which they were confirmed.

(9) The Secretary of State may charge the Council such fees in respect of any byelaws submitted for confirmation under this article as he may consider appropriate for the purpose of defraying any administrative expenses incurred by him in connection therewith.

(10) A copy of the byelaws when confirmed shall be printed and deposited at the principal office of the Council and shall at all reasonable hours be open to public inspection without payment, and the Council shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the Council shall determine.

(11) The production of a printed copy of byelaws confirmed under this article on which is endorsed a certificate purporting to be signed by a person duly authorised by the Council stating—

- (a) that the byelaws were made by the Council,
- (b) that the copy is a true copy of the byelaws,
- (c) that on a specified date the byelaws were confirmed by the Secretary of State, and
- (d) the date when the byelaws came into operation,

shall be prima facie evidence of the facts stated in the certificate.

Management arrangements

21.—(1) The Council may enter into and carry into effect agreements with respect to the construction, maintenance, use, management and operation by any other person of the authorised

works, and any other matters incidental or subsidiary thereto or consequential thereon, including the defraying of, or the making of contributions towards, the cost thereof by the Council or by any other person.

(2) Any agreement under paragraph (1) above may provide for the exercise by another person of the powers of the Council in respect of the authorised works.

(3) The Council may at any time lease the authorised works to another person on such terms and conditions as may be agreed.

(4) The exercise of the powers of the Council in respect of the authorised works by any person pursuant to any agreement under paragraph (1) above shall be subject to the restrictions, liabilities and obligations applicable under this Order in relation to the exercise of those powers by the Council and in accordance with any restrictions, liabilities and obligations entered into by the Council in connection with this Order.

Saving for Trinity House and Queen's Harbour Master

22. Nothing in this Order shall prejudice or derogate from any of the powers, rights or privileges, or the jurisdiction or authority of, Trinity House or the Queen's Harbour Master whether conferred by or under any other enactment or otherwise.

Signed by authority of the Secretary of State for
the Environment, Transport and the Regions

A. S. D. Whybrow
Head of Charging and Local Transport
Division, Department of the Environment,
Transport and the Regions

20th July 1999

The Scheduled Works

In the borough of Gosport in the county of Hampshire—

- Work No. 1 The construction of two temporary causeways comprising stone and geotextile fabric having a height of one metre and a width of 9 metres at the base and a width of 5 metres at the uppermost part thereof—
- (A) one commencing on the south side of Forton Lake at reference point SU461705100867 and extending in a northerly direction for a distance of 60 metres and terminating in Forton Lake at reference point SU461707100924; and
 - (B) the other commencing on the north side of Forton Lake at reference point SU461709101014 and extending in a southerly direction for a distance of 75 metres and terminating in Forton Lake at reference point SU461709100939.
- Work No. 2 A bridge over Forton Lake constructed with reinforced concrete, supported on bored reinforced concrete piles and having an opening span over the navigable channel affording a height upwards without limit above the level of high water and a clear width over that channel of not less than 11 metres, commencing on the south side of Forton Lake at reference point SU461706100840 and extending in a northerly direction for a distance of 202 metres and terminating on the north side of Forton Lake at reference point SU461705101042.
- Work No. 3A A series of mooring piles to be placed in Forton Lake, to the west of the bridge, to enable vessels to moor temporarily, prior to navigating through the bridge, commencing at reference point SU461666100916, extending in an easterly direction for a distance of 15 metres and terminating at reference point SU461681100918.
- Work No. 3B A series of mooring piles to be placed in Forton Lake, to the east of the bridge to enable vessels to moor temporarily prior to navigating through the bridge, commencing at reference point SU461737100940, extending in an easterly direction for a distance of 15 metres and terminating at reference point SU461752100942.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Gosport Borough Council to demolish the existing derelict bridge across the tidal inlet known as Forton Lake, Gosport, to construct two temporary causeways in Forton Lake, to construct and operate an opening bridge across Forton Lake and to construct a series of piled moorings in Forton Lake to the west and east of the proposed bridge.

The Order also provides for the construction and maintenance of subsidiary works, the temporary closure of Forton Lake, the creation of offences for obstruction of the works to be authorised by the Order and for the misuse of the proposed bridge, the removal of vessels and obstructions, the making of byelaws for the regulation and operation of the bridge and the conduct of persons using it, the carrying into effect of agreements for the management of the bridge and incidental, supplemental and consequential matters.

Copies of the plans and sections relating to the Order are available for inspection at the offices of Gosport Borough Council, Town Hall, High Street, Gosport, Hampshire PO12 1EB.

1999 No. 2400

TRANSPORT AND WORKS

The Gosport Borough Council (Forton Lake Opening Bridge)
Order 1999

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