

# ADDLESHAW GODDARD

Our reference SECTG/335688-1

30 December 2013

Mr Bob Bruce  
Deputy Head of Law  
Brighton & Hove City Council  
Room 216  
King's House  
Grand Avenue  
Hove BN3 2SR



## BY POST AND EMAIL

Dear Sir

### **Brighton Marina Act 1968 ("the Act") - request for section 55(1) waiver relating to section 57(4) of the Act**

**Development pursuant to Planning Permissions BH2006/01124/FP and BH2012/04048 ("planning permissions")**

**The Brighton Marina Company Limited, The Outer Harbour Development Partnership LLP and The West Quay Development Company Partnership LLP (together "the Applicants")**

We write on behalf of the Applicants who request the Council provide a waiver to each of them pursuant to the terms of section 55(1) of the Act in relation to the matters set out in section 57(4) of the Act. Draft forms of waiver are appended to this letter at Appendix 1.

As you will know, the Act was enacted "*to authorise the Brighton Marina Company Limited to construct works; and for other purposes*". Sections 56-59 of the Act subsist for the express "*protection*" of the City Council "*unless otherwise agreed in writing*" by the City Council pursuant to section 55(1) of the Act.

Section 57(4) of the Act contains a protective provision for the benefit of the City Council which states that "*from and after the opening of the harbour for the use of vessels the Company shall secure that at all times when the water is at the level of mean low-water springs*" that the depth of water within specific areas shall be not less than expressly stated depths.

The Development consented pursuant to the planning permissions will interfere with the depths stated in section 57(4) insofar as where the Development is to be constructed out into the marina, there will be no depth of water within that footprint. As a matter of good housekeeping the Applicants therefore make this application for a waiver.

The City Council can grant the waiver sought as a formality given the relevant points set out below:

- 1 the protective provision within section 57(4) was inserted in the Act prior to the construction of Brighton Marina and its operation as an active harbour. Subsequently it has become clear how the marina operates and navigation safely managed;

LETTER - MR BOB BRUCE - BRIGHTON MARINA ACT 1968 - REQUEST FOR SECTION 55(1) WAIVER (2).DOC [10-4263438-1/335688-1]

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- 2 the City Council granted the Development pursuant to the planning permissions in its capacity as local planning authority in 2006 and 2013. On each occasion the application for planning permission was accompanied by a fully reasoned environmental statement which included a report dated 1 August 2004 prepared by the Warsash Maritime Centre addressed to the statutory harbour authority, The Brighton Marina Company Limited. The report concluded that the Development would have no deleterious impact on navigational issues;
- 3 The statutory harbour authority, The Brighton Marina Company Limited, was consulted upon and objected to neither of the applications leading to the grant of the planning permissions;
- 4 previously DEFRA has granted licences for the Development which have subsequently expired. DEFRA's role in coastal licensing has subsequently been transferred to the Marine Management Organisation ("MMO"). The MMO granted a marina licence for Phase 1 of the Development on 19th December 2013 having considered all relevant considerations germane to the grant of that licence, of which navigational safety is one principle factor. A copy of the MMO licence is appended at Appendix 2;
- 5 the application submitted to the MMO was supported by a letter dated 11 November 2013 from the statutory harbour authority, The Brighton Marina Company Limited on the basis that it would not affect navigational safety. A copy of this letter is appended at Appendix 3; and
- 6 the application submitted to the MMO was also supported by a letter dated 11 November 2013 from Premier Marinas which has the benefit of a long lease over the marina. Premier also concluded that the Development would have no adverse effect on navigational issues within the harbour entrance. A copy of this letter is also appended at Appendix 3.

In light of the above considerations relevant to the purpose behind the protective provision in section 57(4), which is to safeguard navigational safety, there is no rational reason for the City Council to do other than grant the waiver sought. The decisions previously effected by the Council in its role as planning authority, the opinion of the statutory harbour authority, and the decision of the MMO, each indicate that the protection afforded to the City Council in section 57(4) can be waived for the Development. Taken together, they represent a compelling case for that course of action by the City Council which can act in full knowledge that navigational concerns have been fully considered by the relevant statutory and consenting authorities.

We trust that the City Council will be able to provide the waiver sought at the earliest possible opportunity so that this mere formality can be addressed.

Yours faithfully



Addleshaw Goddard LLP

Direct line +44 (0)20 7160 3102  
Email gary.sector@addleshawgoddard.com

Copy to Oliver Asha - Brighton and Hove City Council  
Andrew Goodall

**THIS AGREEMENT** is made on            day of            2013

**BRIGHTON & HOVE CITY COUNCIL** of Kings House, Grand Avenue, Hove, BN3 2SR ("the Council") of the one part and

**THE WEST QUAY DEVELOPMENT COMPANY PARTNERSHIP LLP** (number OC 354690) whose registered offices is at Brighton Marina BN2 5UF ("the Partnership") of the second part

**WHEREAS**

- 1        Whereas the Council is the successor council to the County Borough of Brighton defined as "the corporation" in the Brighton Marina Act 1968 ("the Act")
- 2        Whereas the Partnership has the benefit of the leasehold interest in land and buildings at the Brighton Marina ("the Marina")
- 3        Whereas Section 55(1) of the Act provides that unless otherwise agreed in writing between the Partnership and the Council certain provisions for the protection of the Council as set out in clauses 56 to 59 of the Act shall apply and have effect in respect of the Marina
- 4        Whereas from and after the opening of the Marina for the use of vessels Section 57(4) of the Act provides that the Partnership shall secure that at the level of mean low-water springs the depth of water in defined areas of the Marina shall be not less than the depths therein stated
- 5        Whereas the Council has granted Planning Permission BH2006/01124/FP and BH2012/04048 ("Planning Permissions") for a development of the Marina which will otherwise breach the protective provisions provided by section 57(4) of the Act
- 6        The Council has considered the matter fully and this Agreement is made under section 55(1) of the Act to record the decision of the Council and the Partnership to permit the construction of the development referred to in the Planning Permissions

**IT IS HEREBY AGREED AS FOLLOWS**

- 1        Pursuant to Section 55(1) of the Act the Council gives consent to the Partnership to its lawful tenants and to their successors in title to implement the Planning Permissions so that any development permitted under the Town and Country Planning Act 1990 by the Planning Permissions which breaches the restrictions prescribed by section 57(4) of the Act is expressly permitted by this Agreement
- 2        For the avoidance of doubt the statutory consent hereby granted is strictly limited to the development described in the Planning Permissions as may be varied from time to time and any further proposals at the Marina which do not arise out of the Planning Permissions as varied from time to time and entail the construction or erection of any work building or structure which breaches the protective provisions prescribed by section 57(4) of the Act shall require the approval of the Council and if so approved shall require a further agreement under Act to be entered into

Executed as a Deed by the Council and the Partnership on the date of this Agreement

Executed as a deed by affixing the common )

seal of **Brighton & Hove City Council** in the )

presence of:-

.....

Authorised Officer

Executed as a deed and delivered by )

**The West Quay Development Company** )

**Partnership LLP** acting by two members )

Signature.....

Member

Signature.....

Member

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Signature.....

Member

Signature.....

Member

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Authorised Officer

The Common Seal of )

**The Brighton Marina Company Limited** )

was affixed to this Deed )

In the presence of

Director

Director/Secretary

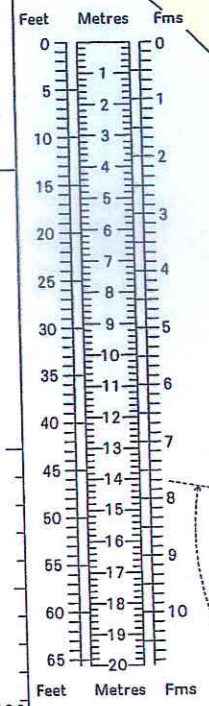
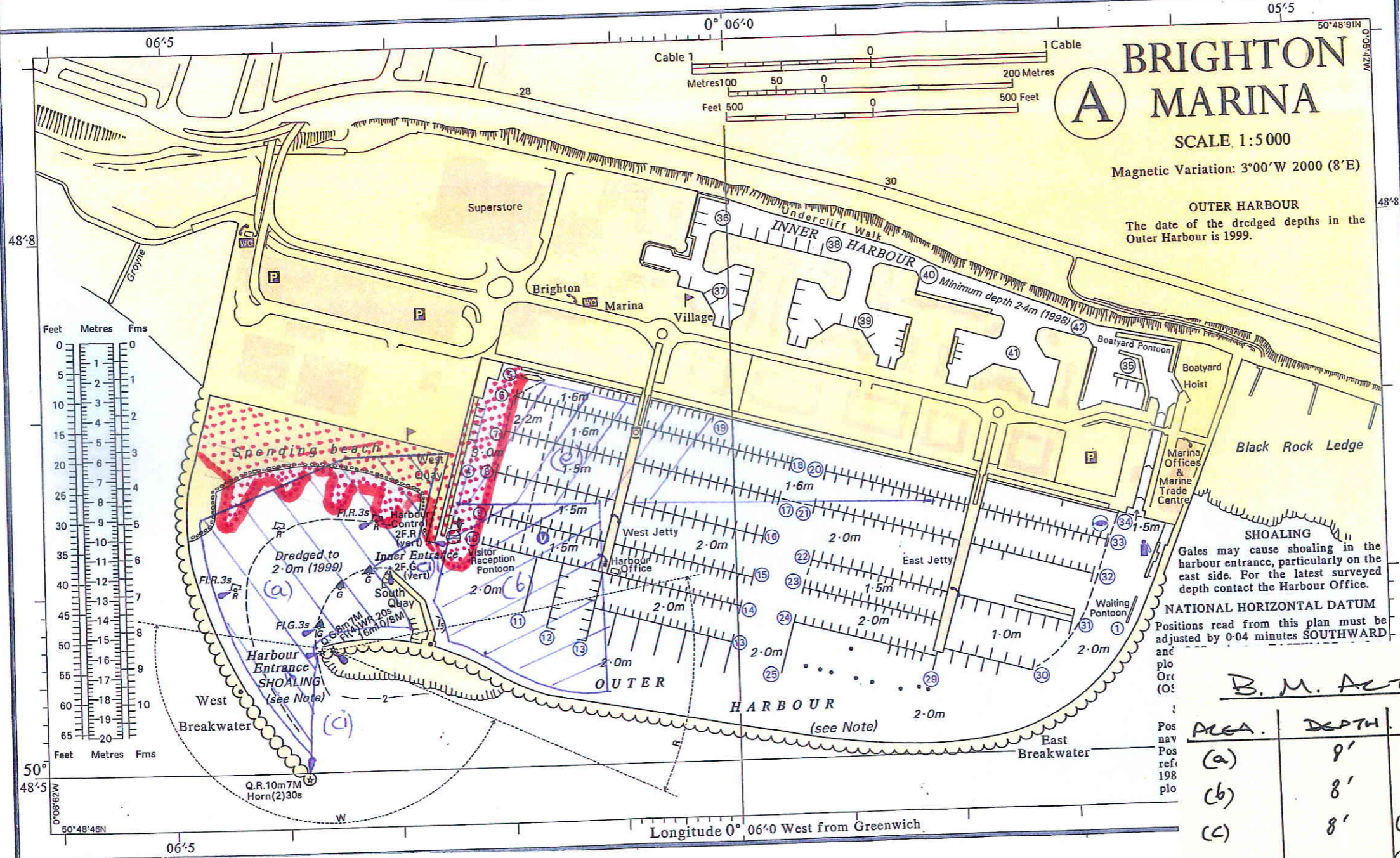




# HARBOURS ON THE SOUTH COAST OF ENGLAND

DEPTHS IN METRES

Depths are in metres and are reduced to Chart Datum, which is approximately the level of Lowest Astronomical Tide.  
 Heights are in metres. Underlined figures are drying heights above Chart Datum; all other heights are above Mean High Water Springs.  
 Positions are referred to the WGS 84 compatible datum, European Terrestrial Reference System 1989 Datum (see SATELLITE - DERIVED POSITIONS Note).  
 Navigational marks: IALA Maritime Buoyage System - Region A (Red to port).  
 Projection: Transverse Mercator.  
 Sources: The origin, scale, date and limits of the hydrographic information used to compile the chart are shown in the Source Diagram. Later information has also been included. Depths in upright figures are from smaller scale surveys. The topography is derived chiefly from Ordnance Survey maps.



**B. M. ACT. CLAUSE 57.4.**

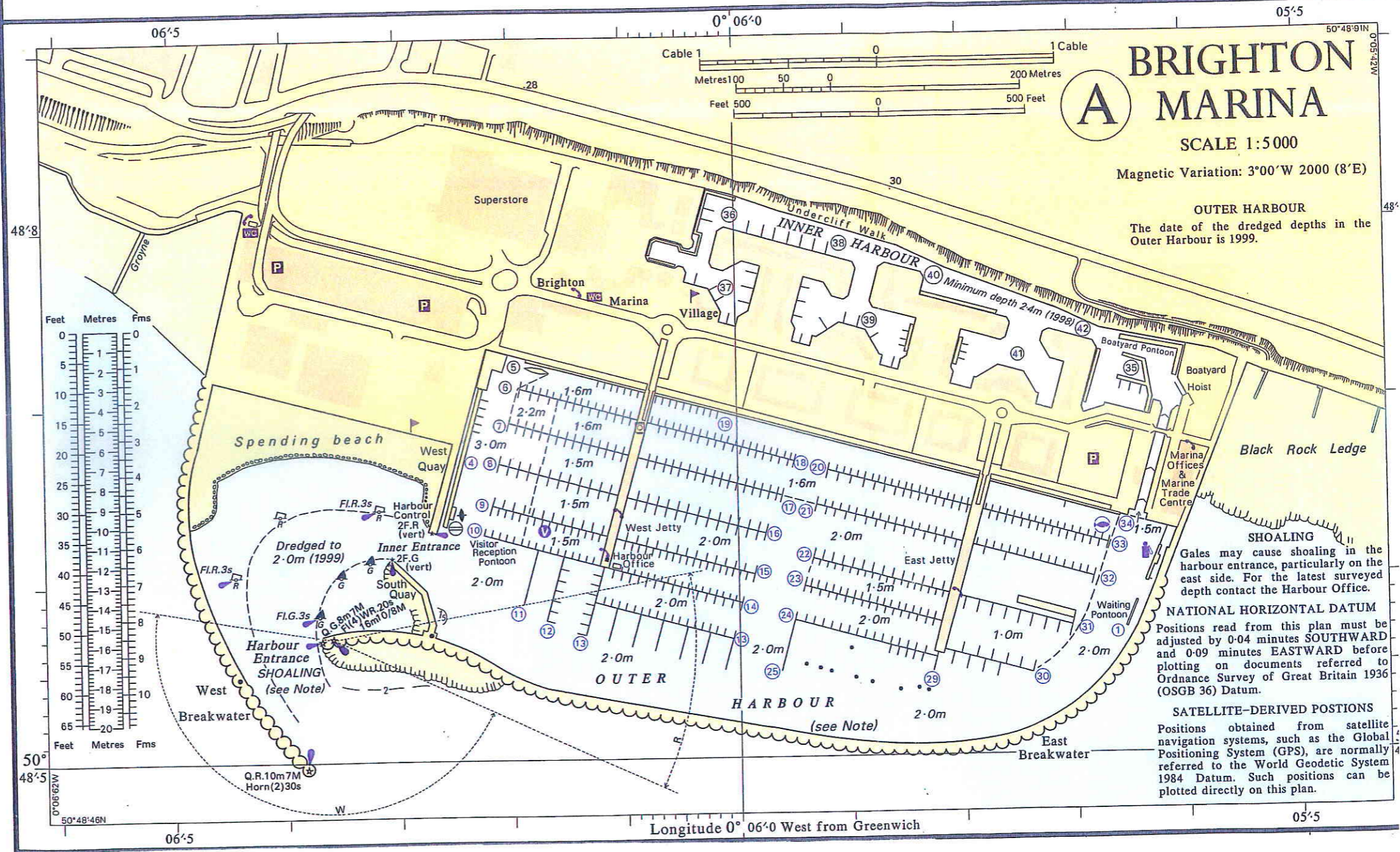
AREA.	DEPTH.	DESCRIPTION
(a)	9'	HARBOUR ENTRANCE.
(b)	8'	OUTER HARBOUR SOUTH WEST.
(c)	8'	(ci) OUTER ENTRANCE 200'
		(cii) INNER ENTRANCE 80'
(d)	6'	OUTER HARBOUR SOUTH EAST.
(e)	5'	OUTER HARBOUR NORTH.



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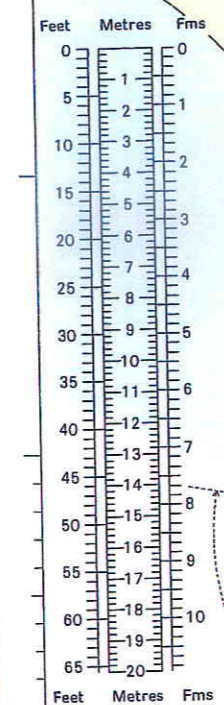
**BRIGHTON MARINA**  
SCALE 1:5000  
Magnetic Variation: 3°00'W 2000 (8'E)

**OUTER HARBOUR**  
The date of the dredged depths in the Outer Harbour is 1999.

**SHOALING**  
Gales may cause shoaling in the harbour entrance, particularly on the east side. For the latest surveyed depth contact the Harbour Office.

**NATIONAL HORIZONTAL DATUM**  
Positions read from this plan must be adjusted by 0.04 minutes SOUTHWARD and 0.09 minutes EASTWARD before plotting on documents referred to Ordnance Survey of Great Britain 1936 (OSGB 36) Datum.

**SATELLITE-DERIVED POSITIONS**  
Positions obtained from satellite navigation systems, such as the Global Positioning System (GPS), are normally referred to the World Geodetic System 1984 Datum. Such positions can be plotted directly on this plan.



Longitude 0° 06' 00 West from Greenwich