

# HAMPSHIRE COUNTY COUNCIL

## Report

<b>Committee</b>	River Hamble Harbour Board
<b>Date:</b>	6 October 2017
<b>Title:</b>	Harbour Works Consent Application
<b>Report From:</b>	Director of Culture, Communities and Business Services

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### 1. Summary

1.1. This report sets out an application for Harbour Works Consent (HWC) made by Marina Development Limited (MDL) to extend five piers at Hamble Point Marina, School Lane, Hamble SO31 4NB.

### 2. Background

2.1. MDL wishes to meet demand for additional berthing by extending the marina within its own curtilage. MDL has undertaken pre-application consultation with the Harbour Master regarding aspirations for the site over a number of years, including attendance at a Consent Advice Panel meeting.

### 3. Project Description

3.1. MDL proposes to extend five of Hamble Point Marina's main piers in order to increase berthing capacity. The extension will allow installation of one additional finger pontoon on each side of these piers. This will create four extra berths per pier, totalling twenty new berths.

3.2. New floating pontoon walkway sections and finger pontoons will be installed in line with existing infrastructure. In order to ensure the piers remain stable some walkway sections and finger pontoons will require additional piles, and some existing piles will be relocated.

3.3. This proposal will not require any dredging.

3.4. This proposal is sited within the title boundary of MDL's Hamble Point Marina.

3.5. The following plans and documents have been provided by the applicant to support this application, and reference must be made to these for a full understanding of the proposal (see Appendix 1a-c):

- Appendix 1a
  - Project Detail & Method Statement

- Appendix 1b
  - Supporting Information
- Appendix 1c - Plans
  - Site Layout - Existing and Proposed Layouts. Rev 0.
  - Pier A & B Extension. Rev 0.
  - Pier C & D Extension. Rev 0.
  - Pier E & F Extension. Rev 0.
  - Pier G & H Extension. Rev 0.
  - Pier I & J Extension. Rev 0.

#### **4. Harbour Authority's Responsibilities**

- 4.1. Consent may be granted by the River Hamble Harbour Board permitting harbour works in the River Hamble in accordance with Section 10 of the Southampton Harbour Act 1924 and Section 48 of the Southampton Harbour Act 1949 as amended by the River Hamble Harbour Revision Orders 1969 to 1989. Within the River Hamble Harbour Board's statutory duties lies the responsibility to ensure that all matters concerning navigational safety and responsibilities under the Habitat Regulations are addressed. This area of responsibility includes the proposed development.
- 4.2. Navigational safety issues are addressed through the Port Marine Safety Code and the Harbour's Safety Management System. Specific issues relevant to this particular application are covered within the Harbour Master's comments below.
- 4.3. The River Hamble is part of the Solent European Marine Site and is afforded protection due to its international nature conservation value. The RHHA is a Relevant Authority under the Conservation of Habitats and Species Regulations 2010 as amended, commonly known as the Habitats Regulations. As a Relevant Authority the Harbour Authority has a duty to comply with the requirements of the Habitats Regulations. This means that the RHHA must ensure that, in the exercise of any of its powers or functions, it must have regard to both direct and indirect effects on interest features of the European Marine Site.
- 4.4. As a Section 28G Authority under the Wildlife and Countryside Act 1981 (as amended), the RHHA has a duty to take reasonable steps, consistent with the proper exercise of the Authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.
- 4.5. Under the Natural Environment and Rural Communities Act 2006, all public bodies, which include the Harbour Authority as statutory undertakers, have a duty to have regard, so far as is consistent with the proper exercise of their functions, to the purpose of conserving biodiversity.
- 4.6. The Harbour Authority addresses its responsibilities under the environmental regulations through consultation with Hampshire County Council, the Local Borough Councils, the Department for Environment, Food and Rural Affairs, Natural England and the Environment Agency. Additional consultation is

undertaken with other organisations as relevant. Specific issues relevant to this particular application are covered within the sections below.

## **5. Consultation process**

- 5.1. Subsequent to receipt of the application for Harbour Works Consent the following actions were taken:
  - Project details and plans entered on the Harbour Authority's webpage for the online viewing of applications at <https://www.hants.gov.uk/thingstodo/riverhamble/workapplication>
  - The plans and details of the application were made available in the Harbour Office for inspection by members of the public.
  - Notification email sent to all members of the River Hamble Harbour Management Committee and the River Hamble Harbour Board of the proposed development.
  - Email sent to interested parties and to members of the Hamble Estuary Partnership informing them of the application and requesting any written comments by the deadline.
  - Direct liaison with the Natural England.

## **6. Responses to Consultation**

- 6.1. Natural England's statutory response raised no objection to the proposed development. See Section 7.
- 6.2. Nine responses were received as a result of the Harbour Authority's public consultation. Eight were not in favour of the proposal, one was neutral. The principal concerns cited were:
  - Loss of open water space.
  - Navigational safety.
- 6.3. A notable feature in a number of the responses was the constructive nature of the suggestions made for control measures to render the risks of the development to be as low as reasonably practicable.
- 6.4. All the responses given which relate to the Harbour Authority's statutory and safety responsibilities have been taken into account in the preparation of this report.

## **7. Harbour Master's Comments**

- 7.1. This section details the aspects of the application relevant to the consideration of Harbour Works Consent. These are the impacts of the proposal on safety and ease of navigation and on the environment, both during construction and once operational.
- 7.2. This proposal also requires permissions from other authorities (e.g. Local Planning Authority, Environment Agency, Marine Management Organisation). Issues pertaining to their policies and regulations should be addressed with the appropriate organisation.

### 7.3. Navigational Safety Considerations.

- Hamble Point Marina wishes to extend a number of existing pontoon arms and create new Hammerheads to optimise the opportunity afforded by the limits of its own existing curtilage. The effect of this extension will be to narrow the adjacent access channel immediately to the East of the Marina, which is bounded in turn on its own eastern side by a number of existing and occupied piled moorings which are not the property of the Marina. These piled moorings are 'broken' and therefore offer access at intervals to the adjacent channel, the only nominated Secondary Channel in the River and then, beyond that, the Main Channel.
- The number of channels into the Marina is not being increased. The number of vessels which are likely to depart from the marina into the access channel at any one time will not change appreciably. The amount of traffic in the area will remain at a manageable level, although certain considerations regarding safety, below, will need to be taken into account.
- In 'painting a picture' of the area in question, the proposal does not reduce the number of perpendicular adjacent channels for vessel traffic in the vicinity. Rather, it narrows the width of the access channel immediately next to the Marina by approximately 13.5 metres (taking into account the beam of the vessels to be allowed berths on the newly created Hammerheads and the beam of those yachts already on the existing midstream piled moorings). The result is a channel that will be 26.6 metres wide at its narrowest point in the event that moorings on both side of the channel are occupied. Whereas this channel is made narrower by the modifications proposed, the width of the channel will continue to conform to the minimum standards set out in the Yacht Harbour Code of Practice to enable safe manoeuvring. For example, provided the size of the craft moored on the outer edge of these hammerheads is restricted to the 4.7 metres in beam indicated, the indicative maximum length of the craft using the channel where it is 26.6 metres in width would be 17.72 metres. The risks associated with this arrangement can be reduced to a level that is as low as reasonably practicable provided certain control measures are applied.
- The management of risks associated with marina operations within the Marina is a matter for the marina owner and operator. The River Hamble Harbour Authority requires that all marinas on the River self-certify that they operate a risk-based Safety Management System (SMS). A pre-requisite therefore for any prospective development will be the reassurance that Hamble Point Marina has amended its existing SMS to reflect the changes brought about by the change in layout of berths and addressed the risks associated with vessels leaving and entering the Marina from the access channel. The SMS developed by Hamble Point Marina should meet in all respects the guidance set out in Chapter 2 sections 1 and 2 of the Code of Practice for the Design, Construction and Operation of Coastal and Inland Marinas and Yacht Harbours.

- The SMS developed by the Marina must further specifically and robustly deal with the management of risk of vessels entering and particularly leaving the Marina and conflicting with other vessels (especially small vessels including dinghies, kayaks and canoes) using the access channel. This will include signage requiring vessels leaving the Marina to give way to other vessels navigating in the access channel, written advice to all Marina berth holders and inclusion in the terms of berth-holders' lease of the requirement to give way coupled with the right of termination in the event of non-compliance. Suitable advice must also be made available for visiting vessels.
- Specifically, the applicant's Risk Assessment for traffic entering or exiting the Marina must continue to consider *inter alia* visibility as a factor for the proposed development as it must do for the existing configuration. It must also continue to give full consideration to the reduction in manoeuvrable space brought about by the narrower access channel when allocating berths so that the risk of collision is maintained at a level that is as low as reasonably practicable. An important factor is that the proposal recognises the need to limit the size of vessels occupying the outer hammerhead in terms of breadth and also in terms of height to maximise visibility of relevant traffic for the benefit of other River Users in the vicinity. The Harbour Master recognises that the narrower channel will reduce the water space available in the access channel but, in the light of the maintained width of the adjacent and parallel Secondary and Main Channels and associated breaks in the mid-stream pontoons for small craft into the former, he is content that the risks to safe navigation in the narrower access channel can be maintained at a level that is as low as reasonably practicable.
- In the event that the proposal is approved, the existing Aids to Navigation (lighting) marking the end of each finger pontoon should be adjusted Riverwards as appropriate. No additional Aids to Navigation would be deemed necessary by the Harbour Master.
- Finally, everyone who proceeds afloat has a responsibility for his or her own safety. This is particularly true for those in charge of vessels and those responsible for children. Skippers of vessels have a responsibility to plan their passage from berth to berth and everyone should think about and plan what they want to do. While training, skill and experience all assist in maintaining safety, common sense will always be a pre-requisite. Skippers of vessels using Hamble Point Marina will have a responsibility to keep out of the way of vessels using the access channel. Those in small craft also have a responsibility to look after themselves. The RHHA and the Marina have a responsibility to regulate, guide and inform but this can never remove the duty from all who go afloat to act within the law and take reasonable precautions to avoid a close-quarters situation.

7.4. The proposal is sited 50 metres outside the boundary of the Solent & Southampton Water Special Protection Area (SPA), the Solent and Southampton Water Ramsar site and the Lee-on-the Solent to Itchen

Estuary Site of Special Scientific Interest (SSSI). It is located between 0 and 15 metres within the boundary of the Solent Maritime Special Area of Conservation (SAC) and the Solent and Dorset potential Special Protection Area (pSPA).

- 7.5. No dredging of sub-tidal or inter-tidal habitat is required for this development.
- 7.6. The applicant has proposed measures to mitigate environmental impacts of piling works on fisheries, and measures to prevent pollution from plant during construction.
- 7.7. The ongoing activities resulting from the development i.e. vessel movement and marina berthing are consistent with those already associated with the marina and surrounding areas of the Hamble.
- 7.8. Natural England's (NE) consultation response is provided at Appendix 2. Natural England state that "*providing the works are carried out in strict accordance with the details of the application which have been submitted, it can be excluded that the application will have a significant effect on any SAC, SPA or Ramsar site, either individually or in combination with other plans or projects*". It is NE's view that "*an Appropriate Assessment of the implications of this proposal on the site's conservation objectives should not be required*". NE also advise that the proposal "*is not likely to damage the interest features for which the SSSI site has been notified*".
- 7.9. NE is satisfied that RHHA may grant consent for the proposal, and recommends that environmental conditions be added to the consent.
- 7.10. NE add an advisory note (in addition to conditions) that "*due to the sensitive nature of the overwintering birds, it would be preferable if the works are not carried out within the months of January and February. If piling needs to be completed in winter, piles nearest the mudflats should be completed as early as possible at the beginning of winter or as late as possible at the end of the winter, to avoid the most sensitive times.*"
- 7.11. If the River Hamble Harbour Board decides to grant permission for this application, subject to the conditions at 9.1g, 9.1h and 9.1i, it would be adhering to its responsibilities under environmental legislation.

## **8. Strategic Vision**

- 8.1 Before reaching a decision regarding this application, it is important to consider it within the context of the Harbour Board's Strategic Vision. The non-statutory Strategic Vision 'seeks to meet the aspirations of all those users who have a stake in the future prosperity of the River Hamble, whether their interests are commercial, recreational or environmental' but should be read in its entirety before reaching any conclusions with regard to this specific application.

## **9. Recommendation**

- 9.1 **That the River Hamble Harbour Board approve the Harbour Works Consent for the proposal set out in Section 3 of this report and subject to the following conditions:**

- a. The proposal is to be built in accordance with the details, plans and method set out in paragraph 3.5.
- b. The development is constructed in accordance with the guidance given in the industry Code of Practice for the design of marinas.
- c. Hamble Point Marina conducts a revised Risk Assessment within its own Safety Management System to reflect and manage the risks of the changes made and provides self-certification that it has done so prior to any construction taking place. That risk assessment will in particular address the management of risk of vessels entering and particularly leaving the Marina and conflicting with other vessels (especially small vessels including dinghies, kayaks and canoes) using the access channel. This will include the following control measures being put in place prior to berths being allocated:
  - i. The affixing of appropriately visible signage (at least 1m in height and 1.5m width, with the wording 'GIVE WAY TO TRAFFIC USING THE ACCESS CHANNEL') at the exit of each Marina channel to show that vessels leaving the Marina are required to give way to those vessels using the access channel.
  - ii. written advice to all Marina berth holders and inclusion in the terms of berth-holders' lease of the requirement to give way as at 9.1c.i above, coupled with the right of termination in the event of non-compliance.
  - iii. Suitable advice must also be made available for visiting vessels.
- d. The beam of craft moored on the new Hammerheads will be limited to the dimensions indicated in the attached plans with no double berthing or rafting allowed. The concomitant impact of the narrower width of the channel will be to limit the length of craft using it to 17.7m (53ft) at the narrowest point (26.6m). Other limitations will apply to the lengths of vessels able to use the channel adjacent to each hammerhead, commensurate with the new width created, which may affect the overall berthing plan within the Marina. This must feature in the Marina's revised risk assessment.
- e. The freeboard height of any vessel moored on the hammerheads shall be such as not to prevent adequate visibility of craft, particularly small craft, using the access channel and, in turn, to afford the necessary visibility to craft exiting the Marina.
- f. The existing Aids to Navigation marking the end of each finger pontoon should be adjusted Riverwards by MDL as appropriate and the necessary facts reported to Trinity House and UKHO, keeping the RHHA informed. No additional lighting to be placed on the pontoons to effect or impact on the visibility or characteristics of Aids to Navigation.
- g. Vibro-piling should be used as a standard. Percussive piling must only be used if needed to drive a pile to its design depth. If percussive piling is necessary then soft-start procedure must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved.

- h. Due to the sensitivity of the summer fish migration season, piling works are best undertaken outside of the summer migration period. Natural England suggests that further advice is sought from the Environment Agency with regard to timing restrictions.
- i. All equipment, temporary structures, waste and/or debris associated with the licensed activities are removed upon completion of the licensed activities.
- j. The development must be completed within 3 years from the date of the approval granted by the Harbour Board.

**CORPORATE OR LEGAL INFORMATION:****Links to the Strategic Plan**

<b>Hampshire maintains strong and sustainable economic growth and prosperity:</b>	yes
<b>People in Hampshire live safe, healthy and independent lives:</b>	yes
<b>People in Hampshire enjoy a rich and diverse environment:</b>	yes
<b>People in Hampshire enjoy being part of strong, inclusive communities:</b>	yes

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

Document

Location

None

## **IMPACT ASSESSMENTS:**

### **1. Equality Duty**

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**Due regard in this context involves having due regard in particular to:**

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

### **1.2. Equalities Impact Assessment:**

A full Equalities Impact Assessment for the River Hamble Harbour Authority's compliance with the Port Marine Safety Code (including environmental responsibilities) has been carried out and this report does not raise any issues not previously covered by that Assessment.

### **2. Impact on Crime and Disorder:**

2.1. This report does not deal with any issues relating to crime and disorder.

### **3. Climate Change:**

3.1. How does what is being proposed impact on our carbon footprint / energy consumption? The contents of this report have no impact on carbon footprint or energy consumption

3.2. How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? Not applicable to this report.