

HAMPSHIRE COUNTY COUNCIL

Report

Committee	River Hamble Harbour Management Committee
Date:	5 March 2021
Title:	Harbour Works Consent Application for Additional Berthing at Universal Marina
Report From:	Director of Culture, Communities and Business Services

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1. Recommendations

1.1. That the River Hamble Harbour Management Committee recommends to the River Hamble Harbour Board to approve Harbour Works Consent for the proposal set out in Section 4 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 4.
- b. The development is constructed in accordance with the guidance given in the industry Code of Practice for the design of marinas.
- c. Vibro-piling should be used as a standard rather than percussive piling. In the event that it is necessary to use percussive piling, soft-start procedures must be employed over a period of at least 20 minutes. Should piling cease for a period of greater than 10 minutes then the soft start procedure must be repeated.
- d. Percussive piling should only be permitted between 16 March and 29 November in any given year.
- e. The development must be completed within 3 years from the date of the approval granted by the Harbour Board.

2. Summary

- 2.1. This report outlines an application for Harbour Works Consent (HWC) made to the River Hamble Harbour Authority (RHHA). Points for consideration in the determination of the proposal are set out in relation to the Harbour Authority's statutory responsibilities and remit for safety and ease of navigation and the natural environment of the Hamble Estuary, both during construction and once operational.
- 2.2. This proposal will also require separate approvals from other regulatory authorities and from The Crown Estate.

3. Background

- 3.1. An application had been made by John Willment Marine Ltd. (via its agent Lymington Technical Services) for the rearrangement of marina berthing and for additional berths at Universal Marina, Crableck Lane, Sarisbury Green, SO31 7ZN

4. Project Description

- 4.1. The following plans and documents have been provided by the applicant's agent, Lymington Technical Services, and reference must be made to these for a full understanding of the proposal (see Appendices 1 to 3):
 - Drawing No 10764/MP/5A Rev A 23.9.2020, 'Proposed Berth Alterations'.
 - Supporting Statement, Document 10764/MP v2 Sept 2020
 - Environmental information to inform any required Habitats Regulations Assessment, Document 10764/ES v1 Oct 2020.
- 4.2. The documents above are also available for viewing, up to the point of determination, on the River Hamble Harbour Authority website at <https://www.hants.gov.uk/thingstodo/riverhamble/worksapplication/currentworks>
- 4.3. In addition, RHHA has undertaken the following:
 - A Habitats Regulations Assessment, including an Appropriate Assessment. This is provided at Appendix 4.

5. Harbour Authority's Responsibilities

- 5.1. 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.
- 5.2. 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.
- 5.3. The River Hamble is part of the Solent European Marine Sites 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 2017 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 Sites.

- 5.4. 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.
- 5.5. 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.
- 5.6. All public bodies such as RHHA are required to make all authorisation and enforcement decisions which are likely to affect the marine areas in accordance with the South Inshore and Offshore Marine Plan which was published in July 2018 by the Marine Management Organisation (MMO). The plan provides a policy framework to shape and inform decisions over how the marine environment is developed, protected and improved over the next 20 years.
- 5.7. 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.

6. Consultation process

- 6.1. 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/worksapplication>
 - Notification email sent to all members of the River Hamble Harbour Management Committee and the River Hamble Harbour Board of the proposed development.
 - Emails sent to registered interested parties and also 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.
 - Direct liaison with all mooring holders affected directly on the 'J' run of moorings as part of the Harbour Authority's remit to act on behalf of the Crown Estate.

7. Responses to Consultation

- 7.1. RHHA undertook a Habitats Regulations Assessment (HRA) on the proposal, including an Appropriate Assessment of the potential effects on the European designated sites, and consulted Natural England on the findings of the HRA. NE's statutory response raised no objection to the proposed development, although some conditions have been put forward. See Section 8 for more details.

7.2. 150 written responses were received as a result of the Harbour Authority's public consultation undertaken at the direction of and on behalf of the Crown Estate. This particular consultation has no bearing on the HWC but given the level of feeling merits reporting here. None were in favour, 150 were not in favour of the proposal, none were neutral. The principal concerns cited were:

- That the availability of affordable moorings would reduce;
- That the Waiting List would be compromised but the return of 42 displaced mooring holders for whom no alternative Crown Estate berths are available;
- That this might be viewed as a precedent for other commercial entities to target Crown Estate private moorings;
- That the balance of private/commercial moorings would become too much in favour of the latter;
- That pontoons bought by individuals for moorings they expected to keep would need to be disposed of at the owners' expense;
- That River Users using the access channel would be displaced with a corresponding impact on navigational safety

7.3. TCE has determined its position separately on the matter.

7.4. 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.

8. Harbour Master's Comments

8.1. 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.

8.2. This proposal also requires approvals from other authorities including the Local Planning Authority, Environment Agency, Marine Management Organisation and from The Crown Estate. Issues pertaining to their policies and regulations should be addressed with the appropriate organisation.

Ease and Safety of Navigation:

8.3. The Harbour Master would make the following points regarding the safety of navigation:

a. The section of the application documents which addresses navigation mentions that the access channel becomes busy because of an increase in dry stack launches. In reality, the dry stack launch facility can only launch one vessel at a time. It is also up to the skipper or master of the vessel proceeding to sea to judge whether it is safe to do so; this includes

any decision on how and when to enter the access channel. If more than one vessel has been launched and both or all set off simultaneously, the same is true. The Marina is also responsible under the Port Marine Safety Code for having appraised all the risks associated with its operations within the River Hamble to ensure compliance with all relevant legislation. This includes arrangements for ensuring that the risks involving dry-launched vessels from its curtilage entering the channel are reduced to levels that are as low as reasonably practicable and that this channel's use is safe.

b. The proposal makes referral to Annual Notice to River Users No 1 and its guidance on the use of access channels. This passage points out some of the risks associated with the use of the channel to inform mariners. It is not the case that to use it is 'bad navigation'. This depends on many factors. As the International Regulations for the Prevention of Collisions at Sea point out, *every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision (Rule 5) and Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action and be stopped within a distance appropriate to the prevailing circumstances and conditions.(Rule 6)*. Among the factors determining a safe speed are: *the state of visibility; the traffic density..; the manoeuvrability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions; at night the presence of background light... ; the state of wind, sea and current and the proximity of navigational hazards*. In summary, this channel is safe to use, provided mariners doing so navigate in a considerate manner. Its removal is not required other than to enable the proposed development.

c. The proposal would reduce the requirement for tenders to be used to access a number of mid-stream moorings. Tender incidents, including falling from them when climbing onto pontoons are one of the most frequently recorded incidents. It can be argued that this development would provide a net reduction in the number of mid-stream berths where this might be an issue.

d. The argument that this development would force smaller craft into the main channel has been made by a number of respondents to the consultation. Small craft, including paddleboarders, kayaks, tenders and others do use the access channel. The development will make it necessary for those craft to choose different routes up or down stream. This section of the River is unusually straight, affording a good level of visibility along its length. In the existing configuration, there are four channels: the access channel, the Main Channel, the channel between the 'L' and 'M' runs on the North side of the River and the waterspace between the 'M' run and Lincegrove and Hacketts' marshes. It is unusual to have this number of options for small craft traffic within the River. In the proposed development, three channels would remain. It cannot be argued safely that vessels will be forced into the Main Channel because two other usable northern inshore options are available. Next, those choosing to navigate those routes may cross at two areas affording good visibility both for themselves and for craft approaching them. These are the Swanwick and Crableck bends. Both offer good sightlines upstream and downstream and are safe places to cross

the River. At Swanwick, from the Slipway, one can immediately see upstream to the Elephant Boatyard and downstream, directly, to Mercury Yacht Harbour. The same goes for Crableck. where, crossing from the Eastleigh side, one has visibility as far as Swanwick upstream and, downstream, towards the Chinese Bridge (crossing the other way is admittedly restricted to the North by the curve of the bend but there is still two and a half cables of clear water, depending on where one chooses to cross. Taken together, that there will remain three channels and ample crossing safety, it is not reasonable to argue that the risks cannot be reduced to levels which are as low as reasonably practicable. Bye Laws, General Directions, paddleboarding guides, visitors' guides, the River Hamble Handbook and Patrols are all among the control measures which exist to maintain risks to a level that is as low as reasonably practicable.

Mid-stream Moorings:

- 8.4. The following points relate to the proposed changes to mid-stream moorings. This is relevant because of the RHHA's formal appointment as the manager of The Crown Estate's mid-stream moorings and TCE's direction to consult on its behalf:
 - a. The proposal would affect directly 42 mooring holders for whom no replacement berths could be guaranteed. Those not found berths would either re-join the Waiting List or chose to take up Universal Marina's offer of a berth within the marina.
 - b. The element of the proposal to replace pile moorings J20 to J27 with a continuous pontoon is sited within a Mooring Restriction Area will be subject to separate scrutiny by Fareham Borough Council under its planning policies.

Environment:

- 8.5. The application documents submitted provide information on the environmental pressures associated with this development. This information was used to help inform RHHA's Habitats Regulation Assessment of the proposal which assessed the significance of all the pressures (those during construction and once operational) likely to interact with the interest features for which the various nearby European Sites are designated. This is provided at Appendix 4.
- 8.6. The proposal is sited within the Solent Maritime Special Area of Conservation (SAC) and the Solent and Dorset Special Protection Area (SPA). It is sited 50m to the nearest 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), and 70m to the nearest boundary of the Lincegrove & Hackett's Marshes SSSI.
- 8.7. The 54 additional piles proposed are estimated to result in the direct and unavoidable permanent loss of an area of 5.43m² of seabed habitat. 12 of these additional piles will be driven outside the SAC boundary. The boundary of the SAC passes through part of the current berthing area of Universal Marina, following a line associated with the edge of a previous layout of berths at the time of the SAC designation. 42 new piles will be

driven within the SAC boundary and result in an estimated unavoidable loss of 4.23m² with the SAC. The feature of the Solent Maritime SAC impacted subtidal mixed sediment. Any loss of such habitat is deemed as having a Likely Significant Effect on the SAC. This required RHHA, in accordance with the provisions of the Habitats Regulations, to undertake an Appropriate Assessment of the effect on the designated features of the site, and to then consult NE on its conclusions. The current extent of subtidal mixed sediment within the Solent Maritime site is 2,619.08 hectares (26,190,000 m²). The proposed loss of 4.2m² equates to 0.000423 hectares which is 0.000016%.

- 8.8. The applicant has proposed best practice measures in the use of vibro-piling, and also the implementation of a Construction Environment Management Plan for managing construction risks including pollution prevention and waste management.
- 8.9. The Appropriate Assessment took into consideration the conservation objectives of the protected site and the significance of the habitat loss on the characteristics of the qualifying feature effected (subtidal mixed sediment) in terms of its rarity, sensitivity location, distribution, and ecological function. RHHA concluded that the proposal will have no adverse effect on the integrity of a European Site, either individually or in combination with other plans or projects. Natural England concurred with this conclusion, and its comments are provided at the end of the HRA (Appendix 4).
- 8.10. Natural England's consultation response also stated, in respect of the Wildlife and Countryside Act 1981 (as amended) that "*Natural England advises that the proposal, if undertaken in strict accordance with legislation the details submitted, is not likely to damage the interest features for which the SSSI site has been notified*". However, NE recommends that the following conditions are added to the consent to ensure that the activity is undertaken as per the application and therefore compliant with the above legislation:
- "i. *Condition: Use of vibrational piling rather than percussive piling. In the event that it is necessary to use percussive piling, soft-start procedures must be employed over a period of at least 20 minutes. Should piling cease for a period of greater than 10 minutes then the soft start procedure must be repeated.*
- Reason: To minimise disturbance to any overwintering or breeding bird features of the SPA/SSSI, that may be using the area, and to minimise environmental impacts on marine habitats and species and allow any marine and terrestrial wildlife in the area to move away.*
- ii. *Condition: Percussive piling should only be permitted between 16 March and 29 November in any given year.*
- Reason: To minimise disturbance to any overwintering or breeding bird features of the SPA/SSSI that may be using the area."*
- 8.11. If the River Hamble Harbour Board decides to grant permission for this application, subject to the conditions at 1.1c and 1.1d, it would be adhering to its statutory environmental responsibilities.

9. Strategic Vision

- 9.1. 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.

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

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

DocumentLocation

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.