

HAMPSHIRE COUNTY COUNCIL

Report

Committee	River Hamble Harbour Board
Date:	15 July 2022
Title:	Harbour Works Consent Application - Retention of existing jetty (retrospective application) and installation of new ecological enhancements at Highfield, SO31 7DF
Report From:	Director of Culture, Communities and Business Services

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Purpose of this Report

1. The purpose of this report is to set out an application received by the River Hamble Harbour Authority for its consideration to grant Harbour Works Consent.

Recommendations

2. **That the River Hamble Harbour Board approves Harbour Works Consent for the proposal set out in paragraph 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 size, arrangement and specific location of the enhancement features are to be submitted to and approved by the Harbour Master in writing prior to installation.
 - c. The applicant should ensure that all equipment, temporary structures, waste and/or debris associated with the consented activities be removed upon completion of the consented activities.

Executive Summary

3. This report seeks to:
 - Set out an application for Harbour Works Consent made by the owner of Highfield, Green Lane, Lower Swanwick, SO31 7D, via his agent Marina Projects Limited, for the retention of an existing jetty structure

(retrospective application) and the installation of new ecological enhancements to the existing saltmarsh and intertidal area.

- Consider the impacts of the proposal on safety and ease of navigation and on the environment of the Hamble Estuary, both during construction and once operational.

Project Description

4. The proposal consists of two elements. The first relates to a timber ‘jetty’ structure 14.4 metres long by 2.64 meters wide which has already been built (in autumn 2020) and serves as a small slipway from the owner’s garden into the head of an intertidal creek. The second element relates to a small ecological enhancement scheme comprising coir rolls and low-profile wicker fencing to be placed by hand around the edges of the adjacent saltmarsh in order to reduce erosion and encourage sedimentation and colonisation by saltmarsh plants. The following 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 1 to 7):
 1. Project Summary File Note MP276-FN-07
 2. Location Plan MP276-00-A-001
 3. Jetty Footprint and area of impact MP276-00-A-200
 4. Jetty Plan and Section – as built MP276-00-A-300
 5. Enhancements – proposed approximate locations MP276-00-A-201
 6. Fareham Borough Council HRA Screening Matrix and Appropriate Assessment Statement
 7. Fathom Ecology Preliminary Environment Assessment Walkover Survey

Harbour Authority’s Responsibilities

5. 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.
6. 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.

7. 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.
8. 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.
9. 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.
10. 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.
11. 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.

Consultation process

12. 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>
 - 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 registered 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.
- Direct liaison with Knight Frank, the agent for The Crown Estate and HCC's Estates team.

Responses to Consultation

13. Natural England's statutory response raised no objection, and it concurred with RHHA's assessment under the Habitats Regulations (see paragraph 24 below)
14. Two responses were received as a result of the Harbour Authority's public consultation. Neither were in support or objection but both wished to raise concerns of:
 - the retrospective nature of this application.
 - The development of a culture where such activity will be given permissions with some form of offset after development.
 - potential for ongoing minor damage/erosion to the marsh from use of the creek.
 - whilst the habitat lost is not functioning saltmarsh, it is still intertidal habitat and so now cannot become marsh again and is also lost as an area of for wader bird foraging habitat as they do not respond well to artificial shading.
15. 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.

Harbour Master's Comments

16. 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.
17. It is very much an exception that an application be brought before the Harbour Board retrospectively. The structure's existence was noticed by the Harbour Authority which then sought to advise the developer of the permissions required. The retrospective consenting work required has underlined the importance for all developers of early engagement with relevant planning authorities to ensure compliance.
18. This proposal has been granted retrospective planning permission by Fareham Borough Council (October 2021) and granted a retrospective Marine Licence (ML) by the Marine Management Organisation (February 2022). Requirement for a Flood Risk Activity Permit from the Environment Agency (or exemption, as can be the case where a ML has been granted) will be followed up on completion of the Harbour Works Consent process.

19. The Crown Estate's agent has advised the applicant's agent that the Crown Estate approval is to be sought once all other consents have been obtained.
20. The majority of the jetty is on the applicant's private land but the riverward end occupies an area of Hampshire County Council's (as RHHA) riverbed lease from The Crown Estate. There will, therefore, be a requirement for an extraction of this small area from the RHHA lease. It is not considered that an extraction is necessary for the small areas occupied by the coir and wicker features forming the environment enhancement.
21. The proposal is sited within a Site of Importance for Nature Conservation (SINC), is on the boundary of the Solent and Dorset Coast Special Protection Area (SPA), the jetty is 80m from the boundary of the Solent Maritime Special Area of Conservation (SAC) and 550m from the boundary of the Solent and Southampton SPA and Ramsar.
22. A Habitat Regulations Assessment (HRA) was conducted by the Fareham Borough Council (FBC) during determination of the retrospective planning application for the constructed jetty. This concluded that the development would not have a likely significant effect on the Solent and Southampton Water SPA and Ramsar, Solent Maritime SAC and Solent or the Dorset Coast SPA, alone or in-combination with other plans/projects. During the determination of the planning application, in consideration of planning policy in relation to the SINC, FBC required enhancement measures also be included as part of the proposal in order to protect and restore the edge of the saltmarsh habitat within the SINC. The developer employed an ecologist who produced the enhancement proposal which was then approved by the LPA as part of the planning permission
23. The application for Harbour Works Consent includes both the area of the jetty below mean high water jetty and the enhancement proposals. RHHA's HRA has adopted FBC's HRA in relation to the jetty and, in addition, RHHA has assessed the enhancement elements of the proposal as follows:
 - i. The coir rolls and wicker fences will be located 500 metres from the Solent and Southampton water SPA and Ramsar site, and between 50 metres to 100 metres from the nearest boundary of the Solent Maritime SAC. There will be no loss of habitat in any of these sites as a result of the proposal.
 - ii. The coir rolls and wicker fences will be secured with wooden pegs/stakes adjacent to the edge of the saltmarsh habitat. They will be located on the intertidal mud just within/on the boundary of the Solent and Dorset Coast SPA. The qualifying feature of this SPA is the water column, so by installing the enhancement features on the upper edge of the intertidal mud the proposal will not result in a likely significant effect. They will not be located in a subtidal area.
 - iii. The coir rolls and wicker fences will be made of natural material and will be installed by hand, with any associated waste removed after construction, therefore there will be no pollution risk to nearby designated sites as a result of the proposal.

- iv. RHHA concludes that, in considering the proposed enhancement features in addition to that of the retrospective jetty, the proposal will not result in a likely significant effect alone on the Solent Maritime SAC, Solent and Southampton Water SPA/Ramsar or on the Solent and Dorset Coast SPA alone or in-combination with other plans/projects.
24. Natural England's consultation response concurred with RHHA's assessment under the Habitats Regulations, and stated that *"providing the works are carried out in strict accordance with the details of the application 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. Therefore, it is our view that an Appropriate Assessment of the implications of this proposal on the site's conservation objectives should not be required."* NE also advised that *"the proposed works are not located within or in close proximity to a Site of Special Scientific Interest. Natural England have not identified a pathway by which impacts from the development would affect the interest features of the site(s). Therefore, if the works are carried out in accordance with the application, in Natural England's view they are not likely to damage any of the flora, fauna or geological or physiographical features for which the site is designated"*.
25. The applicant has proposed a number of enhancements aimed at sustaining the saltmarsh adjacent to the development. The number, size and location of the coir rolls and supporting stakes have yet to be agreed with the Harbour Authority. Given their proposed location, close to the bank, these will not represent a particular navigational hazard, surrounded as they are by existing undulations in saltmarsh profile. The Harbour Authority will liaise with the developer and the ecologist to identify the most appropriate configuration. Any enhancement is subject to Fareham Borough Council's planning condition that the enhancements be maintained by the developer in perpetuity.
26. The area under consideration is not subject to routine navigation, guarded as it is by the Northern jetty arrangements of an adjacent marina. It is also well clear of the Main Channel and in very shallow water. The Harbour Master therefore has no concerns regarding risks to the safety of navigation save with regard to the appropriate placement of coir rolls discussed at paragraph 25.

Strategic Vision

27. 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.)

Document

Location

None

IMPACT ASSESSMENTS:**1. Equality Duty**

- 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.

- 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:

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

3. Climate Change:

- 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
- 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.