

# HAMPSHIRE COUNTY COUNCIL

## Report

<b>Committee</b>	River Hamble Harbour Board
<b>Date:</b>	6 April 2018
<b>Title:</b>	Harbour Works Consent Application - Variation to Existing Consent for Proposed Pontoon Layout at Swanwick Marina
<b>Report From:</b>	Director of Culture, Communities and Business Services

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### 1. Recommendation

- 1.1. That the variation to the Harbour Works Consent for the proposal set out in this report be approved, subject to the following conditions:
  - a. That the proposed pontoon layout is to be built in accordance with the details and plan set out in paragraph 4, with conditions as specified in River Hamble Harbour Authority's Harbour Works' Consent dated 23 July 2007, with the single exception that fixed navigation lights as approved by Trinity House shall be fixed to each Hammerhead.
  - b. Any changes to the exact location of any piles supporting the proposed layout that are found to be required at detailed design must be approved in writing by the Harbour Master.
  - c. The applicant should ensure that only coatings and treatments that are suitable for use in the marine environment are used in accordance with best environmental practice. All reasonable precautions will be undertaken to ensure no pollutants enter the waterbody.
  - d. The applicant should ensure that all equipment, temporary structures, waste and/or debris associated with the licensed activities is removed upon completion of the licensed activities.
  - e. Vibro-piling should be used as 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.
  - f. That the pontoon reconfiguration must be completed within 3 years from the date of the approval granted by the Harbour Board.

### 2. Summary

- 2.1. This report sets out an application for Harbour Works Consent (HWC) at Swanwick Marina, Swanwick Shore Road, SO31 1ZL, made by Marina Projects Limited on behalf of its client Premier Marinas Limited.

- 2.2. The proposal is for a variation to an existing Harbour Works Consent and relates to minor changes to the position of some of the pontoons and associated piles previously approved but not yet constructed.

### **3. Background**

- 3.1. Premier Marinas Ltd holds current Harbour Works Consent for a large scale modernisation within the existing curtilage at Swanwick Marina which includes a new layout of the marina pontoons. This consent was granted by the Harbour Board in July 2007, and a minor variation request was subsequently approved in 2009. At the time this consent was not time-restricted and is therefore still valid for construction.
- 3.2. The redevelopment scheme at Swanwick Marina involves many elements outside the jurisdiction of the Harbour Authority (housing, parking, commercial units), and some have already commenced or been completed. This application relates only to the adjustment of the layout of pontoons and piles from that previously approved but not yet constructed.

### **4. Project Description**

- 4.1. 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 proposed variation (see Appendix 1a and 1b):

- Appendix 1a : File note – Summary of Changes.
- Appendix 1b : Drawing Number MP269.7-00-P-Sk02 (Rev B)

- 4.2. A summary of the proposal is provided in the file note at Appendix 1a, including the changes to the number of piles and berths.

- 4.3. Drawing Number MP269.7-00-P-Sk02 (Rev B) sets out the following:

- existing layout as built (in red).
- the currently consented layout (in green).
- the revised layout for which approval is now sought (in black).

For clarity, where the black lines of the proposed layout are not visible, there is no change to that element from the consented layout marked in green.

- 4.4. Appendix 2 – aerial photo of the existing layout at Swanwick Marina for ease of reference.
- 4.5. This application constitutes a variation to an approved plan which could be implemented now. The previously consented application was subject to comprehensive scrutiny, including a detailed Environmental Impact Assessment. This scrutiny informed the conditions of the granted Harbour Works' Consent. With this in mind, these documents are not resubmitted here.

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

- 5.1. Consent for this variation 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 Marine 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 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.
- 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. 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. 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>.
  - 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 written comments by the deadline.
  - Consultation with Natural England.

## **7. Responses to Consultation**

- 7.1. All the responses received which relate to the Harbour Authority's statutory and safety responsibilities have been taken into account in the preparation of this report.
- 7.2. Natural England's statutory response raised no objection to the revised pontoon and pile layout. See Appendix 3. NE is satisfied that RHHA may grant consent for the proposal and recommend that conditions be added to the consent.
- 7.3. The Harbour Master would like to thank those who responded for their comments on both the presentation of the plan and views on its perceived viability. Responses were received from Curdridge Parish Council, which raised no objection, as well as three members of the public and the River Hamble Mooring Holders' Association all of whom wrote in objection to the variation. Three respondents wrote twice. While it is not policy to put those responses in their entirety before the Management Committee, they commented that:
  - The proposed position for pile A6 should be moved to the West to facilitate easier access to and from the Swanwick Slipway;
  - The drawing submitted should be amended to show the location of the 'V' pile run across the Main Channel in order to make clear the width of navigable water;
  - The new piles G9 and G10 would restrict the available space for manoeuvring in the vicinity of the fuel berth;
  - The first eight fingers on the Eastern side of the 'G' pontoon should be angled at 75 degrees to the main walkway in order to bring them into line with the direction of water flow on the ebb tide; it was proposed that a similar but smaller angle would be appropriate on the outer fingers of the 'F' pontoon. There should also be no increase in the length of the proposed fingers;
  - That there had been numerous collisions and close quarters situations involving boats departing from the fuel berth, usually on a spring ebb tide;
  - That variations in currents had been created by the capital dredge at an upstream yard contributing to accidents in the vicinity.

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

- 8.1. This section details the aspects of the application relevant to the consideration of a variation to 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 variations/permissions from other authorities (Local Planning Authority, Environment Agency, Marine Management Organisation and The Crown Estate). Issues pertaining to their policies and regulations should be addressed with the appropriate organisation.
- 8.3. At the time of writing this report, submission of the revised pontoon layout plan to Fareham Borough Council (FBC) is pending. The original planning application is still valid as some of the works have commenced, and as such

FBC have advised that the adjustment to the pontoon layout will be assessed as a non-material amendment.

- 8.4. The original Marine Licence has lapsed, and the application for a replacement licence is underway.
- 8.5. The Harbour Master supports the comments made by some respondents in respect of keeping pile A6 clear to the West of the Swanwick Slipway. The Harbour Master also agrees that it is useful for the 'V' run to be marked on the plan to indicate the width of the Main Channel adjacent to the Marina. The Developer has agreed with these amendments and has included them in a revised issue of the drawings (Rev B). For completeness, the changes applied between the drawing (Rev A) used for RHHA's public non-statutory consultation and that submitted for approval (Rev B) are:
  - Shortening of the finger pontoon with pile reference A6 to match the consented layout.
  - Addition of the existing mid-stream V run moorings layer to demonstrate channel width.
  - Updating of the Pontoon references to reflect the proposed re-naming on works completion.
- 8.6. In terms of geometry and dimensions, including access from the Main Channel and in the vicinity of the Fuel Berth, the variation of the plan continues to conform with the requirements of the Industry Standard, the British Marine and Yacht Harbour Design Code of Practice, approved by the Regulator (the MCA).
- 8.7. With regard to respondents' comments on collisions near the fuel berth at Swanwick and nearby, it must first be said that the River Hamble has a strong tidal flow, which is a factor for all responsible mariners and which must be considered along with every other circumstance when planning any voyage.
- 8.8. It is also not the role of a Harbour Authority to reduce any risks to nil; it cannot do so. Steps taken must be reasonable and practicable. Inter alia, conforming with the Code of Practice is a reasonable and practicable step. This also applies to comments on the angling of berths. Recognising any challenges that may be brought about by the direction and characteristics of the current near the 'G' finger, it must always be the responsibility of anyone in command of a vessel to consider all the factors when proceeding afloat and plan his or her journey appropriately. The Harbour Authority cannot be held responsible for the actions of a skipper who fails to take account of, inter alia, the weather, tidal stream, visibility, his or her own ability or currency, the handling characteristics of the craft in the prevailing circumstances and conditions. The International Regulations for the Prevention of Collisions at Sea apply. Rule 2 (Responsibility) states:
  - a. *Nothing in these Rules shall exonerate any vessel or the owner, master or crew thereof, from the consequences of any neglect to comply with these Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen or by the special circumstances of the case.*

*b. In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger.*

8.9. While it is probable that not all collisions or near misses are reported, there is no empirical evidence to support the assertions made regarding numerous collisions in the vicinity or and therefore deduce any change arising from the alleged consequences of an upstream capital dredge. It will be noted that Byelaw 9 requires that:

*The Master of any vessel or pontoon involved in collision causing damage with any other vessel or structure in the River shall forthwith report the circumstances to the Harbour Master.*

8.10. It might be helpful to record that there have been 50 reported collisions in the Hamble River since 2010 and that 6 of these have taken place between the A27 bridge and Swanwick bend. Only one reported collision has taken place near the fuel berth in July 2017 but this did not involve a boat using the berth.

8.11. Three areas of the plan merit observation.

- a. Starting at the Western end, the berthing fingers on the west side of finger 'G' have been commented on unfavourably by some respondents. These have, however, already been considered by the Harbour Board and granted Harbour Works' Consent.
- b. Finger 'G' is shorter than the present finger by 5 metres with a concomitant increase in the lateral width of the Main Channel at that point.
- c. Following a suggestion from a respondent and the support of the Harbour Authority, the developer has agreed to move pile A6 west to the previously consented position clear of the end of the Swanwick slipway, in order to maintain clear access at Low Water.

8.12. The current configuration at Swanwick Marina gives 393 berths and is constructed from 163 piles. The previously consented plan would have delivered 326 berths from 154 piles. This variation order plans to deliver 311 berths from 146 piles.

8.13. The current berthing meterage at Swanwick Marina is 4220m. The meterage under the Variation Order is 4457m.

8.14. It is acknowledged that pile locations supporting the proposed new layout should be considered indicative until an appointed contractor issues their final detailed design assessment. It is unlikely that the arrangement of piles for the finger pontoons will change, but the exact locations of the main walkway piles may need to be adjusted. As such, the Harbour Master will request detailed design drawings be issued to confirm this prior to works being undertaken. See condition in Section 1 above.

8.15. The proposed variation from that previously consented does not raise concern regarding environmental impacts. If the River Hamble Harbour Board decides to grant permission for this variation from the consented pontoon layout to the proposed layout it would be adhering to its responsibilities under environmental legislation.

## **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**

<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.)**

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.

### **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.