

# HAMPSHIRE COUNTY COUNCIL

## Report

<b>Committee:</b>	River Hamble Harbour Board
<b>Date:</b>	10 July 2020
<b>Title:</b>	Harbour Works Consent Application - Elevated Jetty at Holly House, Sarisbury Green, SO31 7AH
<b>Report From:</b>	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 5 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 this application.
  - b. Harbour Dues must be paid on any qualifying vessel used in association with this jetty.
  - c. The jetty is not to be used as a resident berth for any vessel.
  - d. This consent does not permit the addition of any pontoon or docking system alongside the jetty.
  - e. The deck of the proposed jetty is to be open grid GRP to maximise light penetration and therefore significantly reduce the effects of shading.
  - f. Timing of the works to be outside the overwintering bird season which runs from October 1st to March 31st (inclusive) to ensure any adverse effects on the integrity of the Solent and Southampton Water SPA and Ramsar Site is sufficiently avoided.
  - g. A Construction Environmental Management Plan (CEMP) must be submitted to, and approved by Fareham Borough Council, and adhered to in order to avoid any accidental pollution events and therefore an adverse impact on the integrity of the SAC, SPA and Ramsar.

- h. The development must be completed within 3 years from the date of the approval granted by the Harbour Board.

### **Executive Summary**

3. This report seeks to:
  - Set out an application for Harbour Works Consent (HWC) made by Lymington Technical Services on behalf of the owner of Holly House, Sarisbury Green, SO31 7AH, for the installation of a private raised jetty.
  - Consider the impacts of the proposal on the safety and ease of navigation and on the environment of the Hamble Estuary, both during construction and once operational. In considering the environmental impacts, it also takes into account the Appropriate Assessment undertaken by Fareham Borough Council under the provisions of the Habitats Regulations.

### **Project Description**

4. The proposal is for the installation of a private elevated timber jetty to provide private access to the water for the site owner.
5. 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 1a & 1b):
  - Appendix 1a: Drawing No. 10685/2 (Lymington Technical Services) dated Jan 2019.
  - Appendix 1b: Supporting Information Document.

### **Harbour Authority's Responsibilities**

6. 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.
7. 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.
8. The River Hamble forms 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.

9. 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.
10. 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.
11. 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.
12. 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**

13. Subsequent to receipt of the application for Harbour Works Consent the following actions were taken:
  - Project details and plans were entered on the Harbour Authority's webpage for the online viewing of applications at <https://www.hants.gov.uk/thingstodo/riverhamble/worksapplication> During the current coronavirus pandemic and resulting required closure of the Harbour Office to members the public, the plans and details of the application were not on this occasion made available in the Harbour Office for inspection by members of the public. It should, however, be noted that public notices were placed at the site and in local newspapers as part of the requirements for both the planning application and the Marine License application.
  - Notification email sent to all members of the River Hamble Harbour Management Committee and the River Hamble Harbour Board of the proposed development. Based on responses received from members of

the Management Committee, the Chairman is content to advise the Harbour Board to grant Harbour Works' Consent.

- 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 Natural England.

## **Response to Statutory Consultation**

- 14.** Natural England's (NE) statutory consultation response to RHHA is provided at Appendix 2. It states that, on the basis of the information supplied, the application may have a likely significant effect on the designated sites and as such requires an Appropriate Assessment in accordance with Regulation 63 of the Conservation of Habitats & Species Regulations 2017 (as amended). An Appropriate Assessment (AA) must be carried out by a competent authority under the provisions of the Habitats Regulations
- 15.** Fareham Borough Council undertook the AA as part of its determination of the planning application for the same proposal. This is provided within Appendix 1b. The AA does not need to be repeated by RHHA for the Harbour Works Consent application for the same proposal.
- 16.** The AA concluded that the proposal, including those measures proposed to mitigate for all identified potential adverse effects of the proposal, will not result in adverse effects on the integrity of any of the designated sites. Natural England is a statutory consultee on the Appropriate Assessment and concurs with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given.
- 17.** NE also advise that the proposal is not likely to damage the interest features for which the Lee-on-the Solent to Itchen Estuary SSSI site has been notified if undertaken in strict accordance with the details submitted and the mitigation measures it requests be conditioned in the permission (see paragraph 2e, 2f and 2g).

## **Responses to Non-Statutory Public Consultation**

- 18.** One response was received as a result of the Harbour Authority's public consultation. The principal concerns cited were:
  - Permitting this development may set a precedent for further such structures and consequential cumulative impacts.
  - A vessel settling on mudflat during the winter period will result in lost foraging habitat for overwintering birds which are known to use the site.

## Harbour Master's Comments

19. 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.
20. All consultation responses received relating to the Harbour Authority's statutory and safety responsibilities have been taken into account in the preparation of this report.
21. This proposal also requires permissions from other authorities (e.g. Local Planning Authority, Marine Management Organisation). Issues pertaining to their policies and regulations should be addressed with the appropriate organisation.
22. Planning Permission has been granted, subject to the conditions set out in Appendix 1b.
23. The proposed structure is on private land and will not encroach on the RHHA's lease from the Crown Estate. However, this area inside the bridge between the footpath and the properties' gardens up to mean high water mark is within the jurisdiction of RHHA under its establishing Act for the purposes of navigational safety.
24. Use of the jetty will be subject to tidal constraints. The jetty is in confined waters East of a small access point from the main body of the River and traffic in the immediate vicinity negligible. No Aids to Navigation will be required to mark its presence.
25. The size of any craft using the jetty will be limited by the available depth and breadth of navigable water. Only a small, shallow draft vessel is suitable for use associated with the jetty due to the limited depth of the creek as well as the height constraint of the public footpath bridge which must be passed underneath to access the river.
26. The jetty is to be used when sufficient tidal height allows to prevent a vessel grounding on the intertidal zone and associated damage commensurate with the protected nature of the area. See below. Accordingly the jetty is not suitable for use as a permanent berth. See condition 2c.
27. The proposal is sited within the Solent & Southampton Water Special Protection Area (SPA), the Solent and Southampton Water Ramsar site, the Lee-on-the-Solent to Itchen Estuary Site of Special Scientific Interest (SSSI), the Solent Maritime Special Area of Conservation (SAC) and is sited 60 metres outside the boundary of the Solent and Dorset Special Protection Area (SPA).

28. The jetty will be raised above the foreshore occupying an area over it of 15m<sup>2</sup>, but it will be an open grid design to allow light penetration. The small piles (diameter of 10 to 15cm) will be driven into the foreshore, resulting in a direct loss of habitat totalling an area of 1.65m<sup>2</sup>.
29. The application sets out mitigation methods to (i) reduce the impacts of construction on the adjacent foreshore, and to (ii) avoid disturbance of protected overwintering bird population by conducting construction outside of the overwintering bird season. The Appropriate Assessment concludes that *“that the disturbance during the construction phase on the Solent and Southampton Water SPA and Ramsar will be mitigated through the delivery of a CEMP and careful timing of the works”*. This Construction Environmental Management Plan (CEMP) is a condition of the planning application and will be approved by Fareham Borough Council.
30. The Appropriate Assessment concludes that the impact of the small increase in recreational disturbance on the SPA resulting from the use of the proposed private jetty and the associated over-wintering bird population is considered to be minimal.
31. The Appropriate Assessment, and subsequent conclusion, of the impacts of this proposal on the designated sites does not consider the additional impacts of a vessel being berthed alongside as a resident mooring, nor of a pontoon or docking system being in place on the foreshore. It is, therefore, important that the jetty is not to be used as a resident berth for any vessel nor for the addition of any pontoon or docking system alongside the jetty. See conditions at 2c and 2d.
32. No dredging of sub-tidal or inter-tidal habitat is required for this development.
33. NE is satisfied that RHHA may grant consent for the proposal providing that that conditions at paragraph 2e, 2g and 2f be added to the consent.
34. If the River Hamble Harbour Board decides to grant permission for this application, subject to the conditions in paragraph 2, it would be adhering to its responsibilities under environmental legislation.

### **Strategic Vision**

35. 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

## **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.

### **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.