

**HAMPSHIRE COUNTY COUNCIL****Report**

<b>Committee</b>	River Hamble Harbour Board
<b>Date:</b>	19 April 2013
<b>Title:</b>	Harbour Works Consent, Mercury Gardens – Call-in
<b>Reference:</b>	4808
<b>Report From:</b>	Director of Culture, Communities and Business Services

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**1. Summary**

- 1.1. This report covers the River Hamble Harbour Management Committee ‘call-in’ of a decision made by the River Hamble Harbour Board at its meeting on 11 January 2013, namely the granting of Harbour Works Consent (HWC) for the installation of new piles and pontoons in the area known as Mercury Gardens, on the western side of the River Hamble to the north of Port Hamble Marina.

**2. Background**

- 2.1 The application for Harbour Works Consent for new piles and pontoons at Mercury Gardens was made by Opus International on behalf of The Crown Estate. Full details and relevant extracts from the covering report are at Appendix 1. After consideration by the River Hamble Harbour Management Committee on 14 December 2012, the advice given to the River Hamble Harbour Board was that works consent should not be granted. Having considered all the relevant factors, the Harbour Board voted to grant consent. An extract from the draft Harbour Board Minutes is at Appendix 2.
- 2.2 Subsequent to the publication of the draft Minutes, matters relating to the number of additional moorings which would result from the scheme and uncertainty regarding the allocation of these new moorings were raised. As a result, a quorum of the Management Committee members (i.e. five members: Councillors Woodward, Burgess, Cooper, Weston and Cartwright) requested that the decision be called-in for review (subject to the content of a response to the matters raised which had been requested but not received from The Crown Estate until after the call-in deadline had expired). No specific grounds were cited in the formal request for the call-in.

### **3. Crown Estate Response**

- 3.1 The Crown Estate response to the issues pertaining to the allocation of moorings was as follows: "For the present we really cannot say anything more than that which we've already communicated publicly. MMO consent has only recently been granted. There has been no formal decision to proceed with the project or decision on the allocation of additional berths except that existing mooring holders would be offered a berth on the new pontoons should the scheme proceed. It is the policy of the Crown to enhance and improve the Estate - this proposal is part of applying this policy."

### **4. Management Committee Call in**

- 4.1 The Minutes of the Management Committee meeting held on 14 December 2012 set out the reasons behind the Committee's original recommendation to refuse harbour works consent for the Mercury Gardens proposal. These were: navigational safety, affordability and lack of coherence with the Strategic Vision. At the Management Committee meeting held on 15 March 2013, where the call-in was considered, it was agreed to recommend that the Harbour Board reconsider and reject the application due to "potentially negative impact on navigational safety through the narrowing of the channel, the risk of cumulative development that was contrary to the Strategic Vision and the potential environmental impact in such a sensitive area".

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

- 5.1 If approved, this proposal will result in an increase in the number of moorings, depending on the size of vessels involved. It is estimated that there will be between 12 and 16 new berths created.
- 5.2 The original covering report highlights the fact that 'the proposal does not lie within a Moorings Restricted Area, so there is no restriction on new moorings other than the overall cap of 3261, which has yet to be reached.' The agreed moorings capacity of 3261 remains unchanged as a result of this proposal.
- 5.3 There has been no public statement (as reiterated by The Crown Estate above) regarding the allocation of these additional moorings, nor has there been any written indication that any of them would be allocated to specific commercial operators. Legal advice taken before the Harbour Board meeting clearly indicated that the only material concerns which could be taken into account when determining consent are ease and safety of navigation, and environmental issues; the Harbour Board cannot determine or condition any works consent on the basis of allocation of moorings or likely cost to mooring holders. The Crown Estate owns all the mid-stream mooring sites and piles, and most of the continuous lengths of mid-stream pontoon; they therefore reserve the right to decide how they should be allocated.

- 5.4 With regards to navigational safety, the impact of the three pontoons can be managed to 'As Low As Reasonably Practical', as required by the Port Marine Safety Code. In reaching this conclusion, due account has been taken of the additional vessels moored in the area, and the proximity to Hamble Yacht Services (HYS) where a number of large vessels are often berthed. Of particular significance, the operators of HYS raised no navigational safety concerns during the Harbour Authority's consultation period.
- 5.5 In deciding to advise the Harbour Board to refuse this application at the call-in, the MC agreed to cite environmental concerns as ground for refusal (see minutes). The proposed development lies within a Special Area of Conservation, and adjacent to a Special Protection Area and a Site of Special Scientific Interest. Environmental legislation is a complex area but the original report on this proposal (reproduced at paras 4.3 – 4.6 of Appendix 1) summarises the River Hamble Harbour Authority's key responsibilities associated with these designations when considering an application for HWC. The environmental aspects of this application have been considered by the Harbour Authority staff, the Environment Agency and Natural England (NE) - see original report paras 7.1 & 7.2. The Harbour Authority is required to consult NE under The Conservation of Habitats and Species Regulations 2010 (as amended) and must take their advice into account when making a decision. NE response is provided at Appendix 3. In providing this advice, NE take into account the full range of impacts that may result from the proposal i.e. disturbance to birds, changes to the tidal prism, increase in boats numbers and associated impacts, and all this forms the basis of their advice. It is the impact of the development upon the features (i.e. habitats/species) for which the sites are designated that is fundamental. Whilst there may be environmental issues associated with developments, if these are not of a nature or of sufficient magnitude, alone or in combination with other projects, to significantly impact the features then they are not strong enough grounds to refuse. The Harbour Board's decision must therefore take in account the advice from the statutory environment authorities.
- 5.6 A letter received on 2 April 2013 from the Vice Captain of the Hamble 'X' One Design (XOD) fleet which owns the pontoon between the nearby piles F1 to F4 confirmed that the Hamble XOD fleet supports this proposal.

## **6. Recommendation**

### **6.1 It is recommended that the River Hamble Harbour Board upholds its earlier decision to grant Harbour Works Consent for the Mercury Gardens project, subject to the same following conditions:**

**6.1.1 Removal of moorings as indicated in drawings FA EG-9476.00 4002 P2.**

**6.1.2 A vibro piling methodology shall be used as standard with percussive piling only used if needed to drive piles to their design**

**depth. Piling works to occur between 30 November and 31 March.**

- 6.1.3 Sufficient Tier 1 oil pollution response booming shall be held to completely encircle the plant equipment being used.**
- 6.1.4 Should there be an incident outside Harbour Office hours and the Harbour Master is not contactable, the Coastguard should be contacted. The Coastguard hold all contact details if required in an emergency.**
- 6.1.5 All relevant consents shall be obtained prior to commencement of the works, and a copy of each consent lodged with the Harbour Office.**

**CORPORATE OR LEGAL INFORMATION:**

**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	yes
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	no
Corporate Improvement plan link number (if appropriate):	

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. Equalities Impact Assessment:**

- 1.1. A full Equalities Impact Assessment for the River Hamble Harbour Authority's compliance with the Port Marine Safety Code 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 has no impact on crime or disorder.

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

- a) How does what is being proposed impact on our carbon footprint / energy consumption? The contents of this report have no direct impact on carbon footprint or energy consumption. If the scheme is approved, there will be an impact as a result of the construction process, but this is not quantifiable.
- b) 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.

## **Relevant extracts from a report to the River Hamble Harbour Board dated 11 January 2013**

### **1. Summary**

1.1 This report details three applications by The Crown Estate for Harbour Works Consent (HWC) to replace existing mid-stream moorings with continuous mid-stream pontoon moorings in three separate locations including Mercury Gardens.

1.3 Note that, as a result of responses to The Crown Estate's consultation, the proposal has been modified from the original application, and is as follows:

1.3.3 Mercury Gardens: Delete the proposals to relocate pontoons F1- F4 and F5 – F7, and leave in existing position, as shown in the attached plan FA EG-9476.00 4002 P2.

### **3. Project Description**

#### **3.3 Mercury Gardens**

The proposal is as set out in the attached plans (produced by The Crown Estate's consultant, Opus International). This differs slightly from the original proposal in that the originally proposed re-alignment of pontoon F1- F4 and the re-location of pontoon F5 - F7 have been deleted.

### **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 accord 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 developments.

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, 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 and to ensure that in exercise of any of its powers or functions to have regard to 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, English Heritage and the Environment Agency. Specific issues relevant to this particular application are covered within the Harbour Master's comments below.

## **5 Harbour Authority Consultation Process**

- 5.1 Subsequent to receipt of the application the following actions were taken:
  - i. Project details and plans entered on the Harbour Authority's webpage for the online viewing of applications.
  - ii. Notification email sent to all members of the River Hamble Harbour Management Committee and the River Hamble Harbour Board of the proposed development.
  - iii. Email sent to interested parties informing them of the application, the Crown Estate's public exhibition, and requesting comments by the deadline.
  - iv. The plans and details of the application were made available in the Harbour Office for inspection by members of the public.
  - v. Liaison with the Environment Agency, Natural England and Eastleigh Borough Council.
  - vi. Following receipt of the proposed variations to the plans as originally submitted, the updated versions were entered on the Harbour Authority website, and a further notification email was sent to interested parties informing them of the changes and inviting comments on the changes only.

## 6. Crown Estate Consultation Process

- 6.1 Prior to submitting the application, The Crown Estate wrote to all affected mooring holders informing them of the proposals.
- 6.2 On submission of the application The Crown Estate wrote again to all affected mooring holders inviting them to a public exhibition of the proposals.

## 7. Responses to Consultations

- 7.1 The Environment Agency has requested that vibro piling be used as standard and recommended timing restrictions to reduce impact on migratory salmonids, namely sea trout (see recommendations).
- 7.2 The proposals lie within or adjacent to important nature conservation sites as described in the application documents. Natural England's view is that it does not believe the proposals will have a 'likely significant effect' or a 'detrimental impact' on these sites subject to vibro piling methodology being used.
- 7.4 Eastleigh Borough Council (EBC) do not require a planning application for the proposals that lie within its jurisdiction so will not assess them against the relevant policies contained within the EBC Local Plan. Because of this, RHHA should be mindful of these policies in determining the HWC application. Policy 155.OS should have been referenced in the supporting documents for the application for Mercury Gardens as this is the current policy:  
*“ The Borough Council will only permit new moorings on the River Hamble provided that the Harbour Authority's limit of 3261 moorings afloat is not exceeded and they are not located in the restricted areas as shown on the Proposals Map.”*  
EBC has advised the RHHA that when applying policy 155.OS the term “new” would not prevent the replacement of existing moorings with new ones provided policy aspirations are not undermined. EBC also advised that the opinion of the Harbour Authority in the interpretation of these policies is a significant material consideration. Policy DM34 (as referenced in the supporting documents for the applications for Mercury Gardens) must also be considered but less weight can be applied to this as it has not yet gone through the Local Plan enquiry process.
- 7.5 There were 45 responses from interested parties to the initial notification of an application for Harbour Works Consent and The Crown Estate's exhibition. These responses are summarised in Appendix 4. As shown, some respondents were broadly supportive of the scheme(s) whilst others were broadly opposed. Those opposed to the scheme(s) referred to a potential increase in mooring costs, reduction in the number of 'affordable moorings', ease and safety of navigation, and visual impact. The Crown Estate received a number of direct replies to its letters to affected mooring holders, and numerous comments at the public exhibition. As a result of these replies and comments, and feedback received by the Harbour Authority, The Crown Estate chose to modify all three proposals, as indicated above and in the

attached plans. Many of the concerns expressed in these responses have been addressed, in part, through the revisions detailed in paragraph 3.

- 7.7 Copies of all written comments received by RHHA are available for viewing in the Harbour Office by prior appointment.

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

- 8.1 These proposals will be subject to permissions from the Marine Management Organisation and The Environment Agency.

- 8.2 In terms of navigational safety and ease of navigation, comments are as follows:

### **8.5 Mercury Gardens**

This proposal does not lie within a Moorings Restricted Area, so there is no restriction on new moorings other than the overall cap of 3261, which has yet to be reached. Fore-and-aft moorings in this area are prone to drift into the main channel, constricting its width, particular when there are strong westerly winds at, or near, low water. This proposal entirely resolves this problem. The removal of the 'dog-leg' in the G-Piles and moorings as currently configured makes the alignment of the main channel clearer without any adverse impact on overall channel width. Further, the proposal widens the gap between the G-Piles and the XOD pontoon (F1 – F4), allowing the XODs, which do not have engines, more room for manoeuvre under sail. Large yachts requiring access to the hammerhead at Hamble Yacht Services will have slightly less room to manoeuvre than at present, but this is not considered to be a significant safety issue.

## **9. Recommendations**

- 9.3 It is recommended that the River Hamble Harbour Board grants Harbour Works Consent for the proposal at Mercury Gardens by The Crown Estate with the following conditions.**

9.3.1 Removal of moorings as indicated in drawings FA EG-9476.00 4002 P2.

9.3.2 A vibro piling methodology shall be used as standard with percussive piling only used if needed to drive piles to their design depth. Piling works to occur between 30 November and 31 March.

9.3.3 Sufficient Tier 1 oil pollution response booming shall be held to completely encircle the plant equipment being used.

9.3.4 Should there be an incident outside Harbour Office hours and the Harbour Master is not contactable, the Coastguard should be contacted. The Coastguard hold all contact details if required in an emergency.

9.3.5 All relevant consents shall be obtained prior to commencement of the works, and a copy of each consent lodged with the Harbour Office.

Note: Paragraph numbers are as per the original report and are not, therefore, sequential in this extract.

**Extract from River Hamble Harbour Board Minutes – meeting dated 11 January 2013 (Minutes subject to approval)**

**210. HARBOUR WORKS CONSENT APPLICATIONS – CROWN ESTATE**

In relation to this item, non-pecuniary interests were declared by Dr S Thomson, Mr D Jobson and Mr D Evans by virtue of their being mooring holders on the River and Members of local yacht clubs. Mr Jobson also declared that he had been a member of the working group involved with the original compilation of the proposals relating to Hamble River Sailing Club confirming that this did not prejudice his judgement with regards to the applications for harbour works consent.

The Board received a report from the Director of Culture, Communities and Business Services (item 9 in the Minute Book) with regard to the replacement of midstream moorings with continuous midstream pontoon moorings in three separate locations.

The Board noted the resolutions of the River Hamble Harbour Management Committee in relation to each location (Minute 174 of the Management Committee refers).

Members were reminded of the Board's two duties to discharge when considering the application, namely navigational safety and any potential adverse impact on the environment.

It was noted that the Board was being asked to consider three separate applications for works by the Crown Estate and it was agreed that each be determined separately.

The Marine Director introduced the report and in response to questions from Board members, he clarified a number of details regarding the applications. In particular that up to eight of the permitted 42 moorings would be retained in Warsash Pool, that the pontoons at the Hamble River Sailing Club would potentially accommodate 12 boats, depending on size and that the size of boats being moored at each of the three sites was dependent on demand. He furthermore confirmed that entanglement statistics had been compiled from the incident log, which itself only recorded significant incidents. He confirmed that the available records regarding the location of thefts on the River showed that the trend was for marine crime to focus on individually-moored boats, where thieves were less likely to be caught. He also confirmed that the risks associated with every application for harbour works consent were assessed by reviewing the activity-based risk assessments for navigational safety on the River and that the risks associated with the proposals could be managed to As Low As Reasonably Practical (ALARP) without the need for additional control measures.

Members discussed the proposals and their observations on the applications included disquiet about the marine equivalent of creeping industrialisation and sympathy for individual moorings holders' concerns about crime and escalating costs. The Harbour Board also considered the arguments around granting Harbour Works Consent and the potential adverse impact on ease and safety of navigation, particularly for vessels under sail, in the vicinity of the proposed continuous pontoons in the specific locations. It was noted that the development was perceived to be contrary to some of the aspirations relating to the character and visual appearance of the River as stated in the 'River Hamble Harbour Board's Strategic Vision for the Future of the River Hamble'.

With this in mind, the recommendations at paragraph 9.1 to 9.3 of the report were voted upon and it was resolved:

- That the River Hamble Harbour Board refuses Harbour Works Consent for the proposal at Warsash Pool by The Crown Estate.
- That the River Hamble Harbour Board grants Harbour Works Consent for the proposal at Hamble River Sailing Club by The Crown Estate with the conditions set out in paragraphs 9.2.1 to 9.2.5 of the report.
- That the River Hamble Harbour Board grants Harbour Works Consent for the proposal at Mercury Gardens by The Crown Estate with the conditions set out in paragraphs 9.3.1 to 9.3.5 of the report.