Marine and Coastal Access Act 2009
Decision Report

Title: Birdham Pool – Basin dredge, revetment and pontoons.

Location: Birdham, Chichester

Applicant: Castle Marinas Limited

Reference No: MLA/2016/00195

Address of applicant: Birdham Pool, Birdham, Chichester PO20 7BG

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1. Purpose of the report

This report documents the Marine Management Organisation’s (MMO’s) decision on Castle Marina Limited’s application for a marine licence (MMO reference: MLA/2016/00195) under the Marine and Coastal Access Act 2009 (‘the 2009 Act’).

The purpose of this report is to provide detail of the proposal (‘the proposed project’), the analysis of the consultation responses received and to record the MMO’s conclusions when reaching its determination of the marine licence application. A summary of the potential impacts to the marine environment as a result of the proposed project is also provided with mitigation and full details can be found within section 4.6 of this document.

2. Overview of the marine licence application

A marine licence application has been made to allow construction, dredging and disposal activities within Birdham Pool marina.

The proposed project is to install 14 additional berthing pontoons at Birdham Pool Marina. In order to achieve suitable operating depths for vessels seeking access to the marina, up to 2500 m³ would be dredged using an excavator.

The sediment within the marina is known to have levels of contaminants above Cefas Action Level 2; namely copper (Cu) and mercury (Hg). Such sediment is unlikely to be suitable for open sea disposal. Relocation of the sediment within the existing basin is, therefore, proposed and material would be placed behind a newly constructed revetment to contain the placed sediment.

The revetment wall comprises Nicospan geotextile material supported with 150mm diameter soft wood posts at 500mm centres with an integrated tie back system. The base of the geotextile is to be buried into the sea bed.

3. The marine licence application process

The MMO received the marine licence application on 20 April 2016.

Additional information was provided to the MMO in support of the application on 28 November 2016, 10 February and 2 May 2017.

3.1 Consultation

The MMO has a broad power to consult with any public or private body, or person, it thinks fit with the relevant particular expertise and on the specific considerations of any particular application. The MMO undertook a 4 week consultation starting on 26 May 2016 and was carried out with the following bodies:

- Marine Management Organisation South Eastern (MMO South Eastern region)
- Natural England (NE)
Aside from advice from NE, no objections to the proposed project were received from the above consultees. NE provided information relating to historical records showing the presence of Lagoon Sand Shrimp (‘LSS’) \( (\textit{Gammarus insensibilis}) \) and starlet sea anemone \( (\textit{Nematostella vectensis}) \) within the marina.

Further consultation was carried out with NE due to the presence of LSS at the marina. The MMO’s consideration of NE’s representation is provided below (section 4.6).

### 3.2 Public notices

The application was advertised in accordance with the 2009 Act. A notice was placed in a local newspaper, the \textit{Chichester Observer}, on 9 June 2016 and the same notice was displayed at Birdham Marina.

The public were invited to make representations to the MMO for 28 days from 9 June 2016. The application and associated documents were also made available on the MMO Public Register and at the Marina Office, Birdham Pool Marina, Birdham.

### 3.3 Public representations

No public representations were received during the 28 day statutory consultation period.

### 4. Relevant considerations

#### 4.1 Marine Policy Statement and Marine Plans

The UK Marine Policy Statement (MPS) is the framework for preparing Marine Plans and taking decisions affecting the marine environment. The MMO must make licensing decisions in accordance with the MPS and marine plans (where in place), unless relevant considerations indicate otherwise (in which case the MMO must state its reasons).

The proposed project is within the South Inshore Marine Plan area. The MMO has assessed the application against the draft plan and has concluded that the proposed project is compliant with the policies.
4.2 Waste Framework Directive


The WaFD provides a general duty to ensure that waste is dealt with in an environmentally friendly way. The main objective of the waste hierarchy is the prevention of waste. Where waste cannot be avoided, the hierarchy aims for the reuse, recycling or recovery of waste.

The dredged material is classified as waste under the WaFD. Disposal to sea is prohibited due to the presence of contaminants Cu and Hg above Cefas Action Level 2. The applicant has therefore proposed to beneficially re-use the dredged material by using it within an environmental improvement scheme. Placement of the sediments behind the constructed revetment wall will permit the planting, and spread, of existing reed beds and wetland which will create habitat for wildlife.

The MMO is, therefore, satisfied that the proposal is compliant with the WaFD.

4.3 Water Framework Directive

The Water Framework Directive (WFD) (Directive 2000/60/EC) is transposed into the law of England and Wales by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (SI 2003/3242) (the WFD Regulations). The WFD and the WFD Regulations require a strategic planning process for the purposes of managing, protecting and improving the quality of water resources. For this purpose, England and Wales are divided into 'river basin districts', each of which has a river basin management plan (RBMP).

Although the MMO is not a competent authority for the purposes of the WFD, the WFD and the WFD Regulations are relevant to the MMO's marine licensing functions. Consideration of an application for a marine licence will include the requirement to have regard to the WFD and the WFD Regulations.

The proposed project will not cause a deterioration of water body status, impact protected areas or jeopardise the water body receiving 'Good' status by 2021. The MMO has, therefore, concluded that the proposed project is compliant with the WFD.

4.4 Habitats Directive

The Habitats Regulations Assessment (HRA) (Directive 92/43/EEC) is a process under the Habitats Directive that identifies and assesses the implications of a plan or project on the protected features of European Protected Sites (EPS). If the assessment concludes that the proposal would have an adverse effect on the integrity of the site, it may only be permitted in strictly limited circumstances.

If it is likely that a proposed project will have a significant effect on an EPS, the MMO must make an appropriate assessment of the implications for that site in view of that
site’s conservation objectives under the Conservation of Habitats and Species Regulations 2010 (as amended) (‘the Habitats Regulations’).

The first determination is whether the proposal is directly connected with or necessary for the management of an EPS. If it is, then there is no need to consider further its implications. The proposed project, which forms the basis of this marine licence application, is not directly connected with or necessary for the management of an EPS.

Given the outcome of the first determination, the second determination is whether or not a proposal is likely to have a significant effect on an EPS by undertaking a Likely Significant Effect (LSE) Test. The proposed project is approximately 50m from the Solent Maritime Special Area of Conservation (SAC) and Chichester and Langstone Harbour Special Protection Area (SPA). The Chichester and Langstone Harbour Ramsar site, which is afforded similar protection as an EPS within the UK, is approximately 40m from the proposed project. An LSE test was completed by the MMO and concluded no LSE.

The MMO consulted NE, the Statutory Nature Conservation Body, who did not raise any concern in respect of the Habitats Regulations. The MMO is satisfied that, based on the advice and evidence received, it can be concluded that the proposed project will not have a significant effect on any SAC, SPA or Ramsar site, either individually or in combination with other plans or projects.

4.5 Marine Conservation Zones (MCZ)

Section 126 of the MCAA 2009 places certain duties on public authorities, including the MMO, when determining a marine licence application which is capable of affecting (other than insignificantly) the protected features or associated processes of a Marine Conservation Zone (MCZ). The closest MCZ to the proposed project is Pagham Harbour MCZ located over 6km from the proposed project. The MMO could not identify any impact pathways so no further assessment has been carried out regarding the potential impact on a MCZ.

4.6 Wildlife and Countryside Act 1981


The MMO is the appropriate authority in relation to the restricted English inshore region and has a duty to consider whether the proposed project has the capability to cause an offence under the 1981 Act.
In its consultation response to the MMO, NE made reference to historic records from the National Biodiversity Network (NBN) which showed the presence of LSS and starlet sea anemone (*Nematostella vectensis*) within Birdham Pool marina. Both species are listed in schedule 5 to the Wildlife and Countryside Act 1981. NE later confirmed that only LSS was the species of concern and, accordingly, no further consideration of *Nematostella vectensis* was undertaken by the MMO.

The presence of LSS within the northern section of the marina was confirmed by the applicant following a presence or absence survey carried out in October 2016. Under s. 9(4)(a) of the 1981 Act it is a criminal offence to “intentionally or recklessly damage or destroy any structure or place which any wild animal specified in Schedule 5 uses for shelter or protection”.

During consultation NE provided final advice that the ‘habitat’ of LSS is the macrophyte *Chaetomorpha linum* (*C. linum*), the water column and marina substrate. The basis for advice is the Marine Life Information Network (MarLIN) which states:

“this species is limited to sheltered, shallow, brackish water habitats with a variety of sediments ranging from organic muds to shingle with various admixtures of sand and silt-clay. *Gammarus insensibilis* appears to be associated with the alga *Chaetomorpha linum*, which may form extensive floating mats. Sheader & Sheader (1985) report that in the Mediterranean the species is generally subtidal down to 15m. In the UK lagoons are shallow so the species is found to a maximum depth of 2-3m.”

In considering NE’s advice, the MMO has determined that the term ‘habitat’ and the terminology used within the 1981 Act of ‘structure or place’ which the LSS ‘uses for shelter or protection’ are not synonymous, nor should they be used interchangeably. It is recognised that the marina substrate and water column may be a place for the purposes of the 1981 Act, however there is no supporting evidence to suggest that LSS use these places for either shelter or protection. Accordingly, the MMO does not consider that the marina substrate and water column themselves are a structure or place which the LSS uses for shelter or protection.

The MMO’s interpretation of the MarLIN advice above is that it shows that LSS is closely associated with the algae *C. linum*, which forms an important component of their diet. Sheader and Sheader (1985) also suggest that the enclosed nature of saline lagoons permits the development and retention of *C. linum* which forms extensive floating mats and host an important contingent of lagoon fauna such as LSS. The MMO therefore conclude that *C. linum* is the structure or place which LSS uses for shelter or protection for the purposes of this marine licensing decision.

In consideration of the protected status under s. 9(4)(a) of the 1981 Act, the applicant furnished the MMO with a revised document, to take into account NE’s additional suggestions, which sets out a series of mitigation measures in order to reduce the potential impacts of the proposed Project on LSS, and the place it uses for shelter or protection.
In summary these mitigation measures include:

- Prior to undertaking the proposed Project, a baseline survey of *C. linum* and LSS will be completed within the proposed Project area.
- Translocation will be undertaken of any *C. linum*, and by association the LSS, from the dredge and disposal area to a temporary holding area within the northern most part of the Birdham marina before, and on completion, of the works. All relocation activities will be supervised by suitably qualified ecologists.
- Water quality sampling and measurements before, during and after the proposed Project.
- Installation of silt curtains around the works areas for the duration of operations.
- If *C. linum* is found during the works, work will be stopped whilst *C. linum* is moved to the temporary holding area.
- Monitoring of *C. linum* and LSS will be undertaken monthly for 6 months post works and the twelve-month anniversary of cessation of the works.

Given the above conclusions concerning *C. linum* as a structure or place which is used by LSS for shelter or protection, it is the MMO’s view that a wildlife licence is necessary in order to obviate any potential offence under s.9(4) of the 1981 Act occurring. The issue of a marine licence is conditional upon all necessary permissions and consents being obtained.

The MMO has considered NE’s advice, dated 15 February 2017, which expressed concern over the temporary translocation of LSS, explaining that they have limited knowledge of other examples of successful translocation of LSS. It is the MMO’s view, however, the *C. linum* that provides a known structure or place used by LSS for shelter or protection and, given that the alga forms extensive free-floating mats, there is nothing to suggest that the proposed temporary re-location of *C. linum* / LSS within another area of the same waterbody will not be successful. This is further supported by the applicant’s consultant ecologists, AHTI Ltd¹, who stated that,

“If the above mitigations are actioned it is likely that the proposed works would have a minor impact upon the G.insensibilis populations at Birdham Pool. Recovery would be likely to occur relatively quickly following the re-introduction of the translocated G.insensibilis to the developed area and may also occur naturally given the presence of the neighbouring population of G.insensibilis in the undeveloped areas of Birdham pool and in the neighbouring Inner Pool.”

The MMO has considered the mitigation measures proposed and accepts that they are sufficient to conserve both the *C. linum* and the LSS population. Due to this, the MMO also deems the recommendation by NE, to carry out a more extensive baseline survey to assess the significance of habitat loss, unnecessary and disproportionate. Appropriate conditions have been secured in the marine licence to ensure that the biodiversity of the marina is safeguarded and the MMO has fulfilled its duties under s. 9(4)(a) of the 1981 Act and also s.40(1) of the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”).
It should also be noted that Sites of Special Scientific Interest (‘SSSIs’) are protected and managed effectively under the 1981 Act to conserve their wildlife or geology. The proposed Project is not within, or adjacent to, any SSSIs; the nearest is Chichester Harbour SSSI which is approximately 50 metres away. The MMO consulted NE who did not raise any concern in respect of SSSIs. The MMO is satisfied that, based on the advice and evidence received, the proposed Project is not likely to damage any of the flora, fauna or geological or physiographical features for which the SSSI site is designated.

5. Conclusion

Based upon the outcome of all of the above considerations, the MMO is satisfied that the potential impacts associated with the proposed Project have been suitably identified, considered and mitigated where necessary. As such, the MMO has made a determination to issue the marine licence, subject to certain licence conditions.
References


