Date: 24 April 2024
Our ref: 471556
Your ref: APP/22/00822

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VIA WEBSITE ONLY

Dear Joseph Toole

APP/22/00822 - Extension to existing pontoons. Boatyard, Marine Walk, Hayling Island, PO11 9PG

Thank you for your consultation dated 28 March 2024 The following constitutes Natural England's formal statutory response.

The Conservation of Habitats and Species Regulations 2017 (as amended) and The Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended)

We can confirm that the proposed works are located within Chichester and Langstone Harbours Special Protection Area (SPA), Chichester and Langstone Harbours Ramsar, and Solent Maritime Special Area of Conservation (SAC).

Assessment of likely significant effect
Natural England's advice is that this proposed development may contain (or require) measures intended to avoid or reduce the likely harmful effects on a European Site, which cannot be taken into account when determining whether or not a plan or project is likely to have a significant effect on a site and requires an appropriate assessment (noting the recent People Over Wind Ruling by the Court of Justice of the European Union).

For this reason, we advise that on the basis of the information supplied that the application may have a likely significant effect on these sites. The application requires an appropriate assessment in accordance with the Conservation of Habitats & Species Regulations 2017 (as amended).

Appropriate assessment
We note that your authority, as competent authority under the provisions of the Habitats Regulations, has undertaken an Appropriate Assessment (AA) of the proposal in accordance with Regulation 63 of the Regulations.

Natural England is a statutory consultee on the Appropriate Assessment stage of the Habitats Regulations Assessment (HRA) process.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England is of the view that it cannot be excluded, on the basis of the objective information supplied by the applicant, that the application will have adverse effects on site integrity (AEOI) on Chichester and Langstone Harbours SPA, Chichester and Langstone Harbours Ramsar, and Solent Maritime SAC. This is because there is a risk that it will affect

the following features of the designated site(s) :

H1140 Mudflats and sandflats not covered by seawater at low tide – Habitat Loss

Information within the HRA conducted by Havant Borough Council indicates that the project will result in the permanent loss of 1.45m^2 of subtidal mixed sediment through the installation of four piles. However, based on Natural England's mapping system we believe that the habitats within the footprint of the works are intertidal mixed sediment and intertidal sand and muddy sand. Alongside this permanent habitat loss, the HRA notes that there will be a temporary loss of c.250m^2 due to the pontoon resting on the exposed sediment at low tide, thereby preventing access to the intertidal for SPA features when feeding and causing abrasion.

The applicant proposes to offset the permanent and temporary loss of habitat through the removal of 16 swing moorings and two existing pontoon sections located to the south-east of the proposed development to create approximately 55.17m^2 of intertidal SAC, SPA and Ramsar supporting habitat as a form of mitigation.. Natural England welcomes the applicants commitment to remove swing moorings and existing pontoon structures and would recommend that this is included in any application going forward.

However, when reviewing such forms of habitat creation, consideration should be given to the Court of Justice of the European Union (CJEU) rulings relating to the Briels (T. C. Briels and Others v Minister van Infrastructuur en Milieu (C-521/12) and Hilde Orleans cases (Hilde Orleans and Others v Vlaams Gewest (joined cases C-387/15 and C-388/15). These cases provide further interpretation of the circumstances under which habitat creation can be considered as a mitigation measure to avoid adverse effects on site integrity. Significantly, in the case of the more recent Hilde Orleans ruling, the Court considered that habitat creation measures due to be completed only after a Habitats Regulations Assessment (HRA) has been undertaken should in fact be taken as 'compensatory measures' and not as mitigation which can be considered at the appropriate assessment stage. In light of this ruling, it is Natural England's view that the CJEU would regard the removal of swing moorings and legacy pontoons off-site not as mitigation for the intertidal habitat loss resulting from the proposed works but rather as compensation for the loss of designated habitat. This is because it would undermine the sites' conservation objectives: to maintain or restore the extent and distribution of qualifying natural habitats and habitats of qualifying species (Solent Maritime SAC); and to maintain or restore the extent and distribution of the habitats of the qualifying features (Chichester and Langstone Harbours SPA).

Natural England is concerned about the impact of habitat loss across designated habitats which, in combination, may undermine the ability to achieve the conservation objectives of the site(s). Natural England is concerned about cumulative impacts from the potential piecemeal small-scale loss of habitat from works such as this within Chichester Harbour. The recent condition assessment of Chichester Harbour SSSI (which underpins the designated features of the SAC and the supporting habitats of the SPA) found that 80.4% of the SSSI was in unfavourable – declining condition, including the SSSI unit which the works are located in, which, amongst other reasons, was due to intertidal habitat decline. Clear demonstration should be provided in the that the plan or project would not make an existing unfavourable situation worse and should consider the characteristics and quality of the mudflats being impacted and an assessment of its value and contribution to the locality, sub-feature and feature. Evidence needed to underpin this assessment should be obtained (if it has not already been collected) by surveying the area or, if available, using data from a recent survey to determine the communities that exist within and outside of the area of the proposed works, how this compares to elsewhere within the SAC and therefore how this area contributes to the overall integrity of the sub-feature and feature.

Marine and Coastal Access Act 2009

The works, as set out in the information supplied by the applicant, are not sited within or near to a Marine Conservation Zone. Natural England have not identified a pathway by which impacts from the development would affect the interest features of the site(s). We are therefore confident that the works will not hinder the conservation objectives of such a site.

Wildlife and Countryside Act 1981 (as amended)

We can confirm that the proposed works are located within Chichester Harbour SSSI. Natural England recommends that the Local Planning Authority does not provide a licence for this activity on the grounds that the application, as submitted, is likely to damage the interest features for which Chichester Harbour SSSI has been notified through the permanent and temporary loss of supporting habitat. As the features of the SSSI overlap with those of the SAC and SPA, please see the section **H1140 Mudflats and sandflats not covered by seawater at low tide – Habitat Loss** above for our more detailed advice.

Other Relevant Matters

Best Practice Measures

In order to further reduce environmental pressures, we recommend that the following best practice measures should be adhered to and secured in any future marine licence:

> 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 should be undertaken to ensure no pollutants enter the waterbody.
> The applicant should ensure that all equipment, temporary structures, waste and/or debris associated with the application is removed upon completion of the works.
> The applicant should ensure that all material is disposed of at an approved waste site.

Invasive Non-Native Species (INNS)

You should ensure that all necessary biosecurity measures are taken to avoid the introduction and or spread of INNS.

Protected species

We have not assessed this application and associated documents for impacts on marine protected species as listed on Schedule 5 of the Wildlife and Countryside Act (1981 as amended). The onus is on the Applicant and the LPA to ensure that they are legally compliant with the legislation throughout the duration of the licence. Further details of the species protected through this legislation can be found here: https://www.gov.uk/government/publications/protected-marine-species.

For any queries relating to the content of this letter please contact me using the details provided below.

Yours sincerely,

[redacted]

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