



DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	FINANCE AND DEMOCRACY COMMITTEE	23 NOVEMBER 2020	15
SAND EXTRACTION - ST ANNES FORESHORE			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

The report details a request from the Operational Management Committee to approve a fully-funded addition to the revenue budget in respect of the St Anne's foreshore sand extraction development studies, in the sum of £232,000, (£70,000 in 2020/21 and £162,000 in 2021/22) to be met in full, from the Funding Volatility Reserve.

The report presents the background to sand extraction from the St Annes foreshore and informs members as to the latest regulatory position following enforcement by the Marine Management Organisation. The report also presents details of the work necessary to be undertaken including costs in order to apply for permissions to resume operations.

RECOMMENDATIONS

1. To approve a fully funded budget addition to the revenue budget in respect of 'St Anne's foreshore sand extraction development studies and regulatory applications' in the sum of £232,000, (£70,000 in 2020/21 and £162,000 in 2021/22) to be met in full, from the Funding Volatility Reserve.

SUMMARY OF PREVIOUS DECISIONS

Council 13 March 1989

The recommendations of the Planning & Development Committee, ref 5/88/1035, was adopted

Planning & Development Committee 22 Feb 1989

The Planning & Development Committee recommended to Council to grant planning permission for application ref 5/88/1035.

Reports to Committee/Council – 1975 to 1989

A number of temporary planning consents and licence concessions for sand extraction on St Annes foreshore granted by Fylde Borough Council.

CORPORATE PRIORITIES	
Economy – To create a vibrant and healthy economy	✓
Environment – To deliver services customers expect	✓
Efficiency – By spending money in the most efficient way	✓
Tourism – To create a great place to live and visit	

REPORT

BACKGROUND

1. The Council owns the beach and foreshore at St Annes and until September 2019 was party to a contract with a commercial operator to extract sand. The contract with, Thomas Armstrong Limited (who had acquired William Rainford & Sons Ltd., the original licensee) permitted the excavation up to 150,000 cubic metres of sand from the beach each year subject to payment by the operator to the Council for each tonne removed.
2. The excavation, sometimes referred to as “sand winning”, falls under two main regulatory regimes. These are town and country planning and marine licensing.
3. Attached at appendix 1 is a diagram which shows the geographical extent of the two regulatory regimes. It shows the extent of the marine licensing controls up to mean high water springs (in purple). It also shows the Local Planning Authority controls down to mean low water (in green).

PLANNING PERMISSION

4. Planning permission for these operations, ref 5/88/1035, was issued in 1989. This permission followed a series of temporary planning consents that had existed since the late 1970s. Notwithstanding Lancashire County Council being the minerals planning authority, these planning permissions were issued by Fylde Borough Council.
5. Lancashire County Council as mineral planning authority has, under the Habitats Regulations 1994 and the Environment Act 1995, an obligation to review the conditions attached to such consents. An application for the initial review of planning permission 5/88/1035 was submitted by Fylde in 2004. However, this application was never finally determined as the Environmental Statement was considered by the county council to be inadequate to allow the full environmental impacts to be determined.
6. In April 2019 Lancashire County Council consulted on their draft Minerals and Waste Local Plan. In assessing the adequacy of supplies it noted that there were 5.9 million tonnes of sand and gravel reserves with planning permission across 7 quarries in Lancashire. It stated that the St Annes Foreshore site had permission up to 2049, which is 60 years after the granting of 5/88/1035 in 1989.
7. In July 2019 Lancashire County Council served notice under paragraph 12 of schedule 14 of the Environment Act 1995, that an application for a second review of the permission should be submitted to LCC by Fylde not later than 16 July 2020. If no application was made by that date, planning permission 5/88/1035 would cease to have effect. An application for postponement of the review date, in line with the legislation, was made by Fylde officers on the basis that the undertaking and consideration of the required studies would take much longer than 12 months and a revised date of October 2022 was proposed. Under Schedule 14 of The Environment Act 1995, the minerals authority has 3 months within which to respond to such a request. As LCC did not respond to this, then the application for extending the review of planning conditions is deemed to have been approved.

MARINE MANAGEMENT

8. In 2009, the Marine and Coastal Access Act introduced marine licensing and established the Marine Management Organisation¹ (“MMO”) to regulate and oversee this. Dredging carried out below mean high

¹ [The Marine Management Organisation](#) is an executive non-departmental public body, sponsored by the Department for Environment, Food & Rural Affairs that licenses, regulates and plans marine activities in the seas around England.

water springs, such as the sand extraction operations carried on at St Annes beach, became a licensable marine activity under section 66 of the act. Carrying on a licensable marine activity, or causing or permitting any person to carry out such an activity, without a licence, became an offence. The council does not hold a licence.

9. While the council had since a broad awareness of the new marine licensing arrangements, it was not appreciated at the time that the sand extraction was a licensable activity. As a result, no licence had been applied for.
10. In August 2019 the council received a visit from an officer of the MMO enquiring about the sand extraction. The conclusion of the MMO officer was that as the activity took place on or below Mean High Water Springs, it was a licensable marine activity, which required a marine licence. As sand extraction had pre-dated the introduction of marine licensing by many years, officers engaged with the MMO to ascertain whether any grandfather/acquired rights existed which might override the need for a licence. Counsel's opinion was also sought to clarify the position.
11. In September 2019 the MMO confirmed that they knew of no grandfather/acquired rights which could apply and confirmed that they had begun a formal investigation into the issue of lack of licence.
12. Following legal advice, a decision was taken on 18 September to suspend sand extraction and the operator was instructed to cease, although over the next few days allowed to remove the existing stockpiles of sand which were already piled in the storage area.

COUNSEL'S OPINION

13. Because of the importance of sand extraction to the council's finances, the council sought advice from Sarah Clover of counsel on the need for a marine licence. Ms Clover was also asked to advise on the anomalous situation whereby the planning permission for sand extraction had been granted by an authority other than the minerals planning authority, and any consequences for the renewal of the planning permission.

On marine licensing, Ms Clover concluded that although *"there is significant mitigation in the fact that these mining operations began so long ago, and, ostensibly under an authorisation which pre-dated the implementation of the marine licensing regime [and there was] is no deliberate flouting of regulations, and this is a complicated situation where a number of regulatory regimes coincide, covering the remit of a number of different regulatory authorities"*, a marine licence was required, and that the council may have committed the offence of causing or permitting the operator to carry out a licensable marine activity without a marine licence.

14. On the planning permission, Ms Clover advised that the planning permission was null and void, having been issued by a body (Fylde Borough Council) which had no power to issue it. Consequently, any review of the permission would also be null and void, because there was nothing to review.
15. On the basis of Counsel's advice, the council would need to have in place a marine licence issued by the MMO and a fresh planning permission, issued by Lancashire County Council, to allow sand extraction to resume.

OUTCOME OF MARINE MANAGEMENT ORGANISATION INVESTIGATIONS

16. In June 2020 the MMO contacted Fylde Council to advise that their investigations had been concluded. In this instance the MMO decided not to prosecute the council for the offences and instead, issued an Official Written Warning for the offence. The MMO noted that Fylde Borough Council cooperated with their investigation throughout and voluntarily ceased the sand extraction activity upon being informed of the investigation. However, the MMO also noted the Council's culpability was high in relation to the offending, having had dealings with the MMO previously and having applied for, and been granted, marine licences for other local works.

FINANCIAL IMPLICATIONS

17. The council has received payment from the operator on the basis on the amount of sand extracted. In 2018/19, the last full year before extraction was ceased the council received £459,959. In 2019/20, £224,150 was received with the cessation of extraction in September 2019, with a few weeks of sand from the stockpile of excavated sand adjacent to the site compound. The council's medium-term financial strategy has been updated to reflect the loss of this income.

RESUMING SAND EXTRACTION

18. If the council wishes to resume sand extraction it will need to obtain planning permission for the operation from Lancashire County Council as the minerals and waste planning authority and a Marine Management Organisation licence from the MMO. Both applications will need to be supported by an Environmental Statement based on a Scoping Opinion agreed with both regulators. Most of the information in support will be common as Natural England and the Environment Agency are key consultees for both LCC and MMO on such applications.
19. The environmental information required to assess these applications is significant given the different environmental designations which exist on and adjacent to St Annes foreshore. The beach and dunes sit within important areas of ecological importance and consequently, and both applications will be required to demonstrate to the satisfaction of both Natural England and the Environment Agency, that future operations will be conducted to mitigate the impact on these areas, if and where required.
20. Officers have researched specialist minerals' planning and environmental consultants that could assist in this and appointed Heaton Planning (Heatons) in conjunction with Golder Associates to undertake an initial assessment of the issues and likelihood of extraction resuming. A project team involving council officers and the consultancy team has been formed to look at the feasibility of achieving a positive determination.
21. The attached briefing note at appendix 2 summarises the position reached to date and concludes that *given that the site has operated successfully for several decades without any obvious ecological or other impact, together with the regional importance of the site for providing a long term secure supply of sand in the north-west, Heatons and Golder are of the current view that the grant of planning permission and the securing of a marine extraction licence is more likely to succeed than not.*
22. Heatons have provided an estimate of the cost of proceeding with the environmental surveys, completion of environmental statement and planning and MMO applications which is shown in detail in appendix 3 and a summary in table 1 below. The estimate including contingencies is £232,000. This work would be undertaken from now leading to applications submitted to LCC and MMO in August 2021 with a likely determination around Spring 2022.

Overall summary of cost estimate	£
Planning application/environmental statement (estimate)	123,783
Statutory/regulatory fees (estimate)	87,000
Contingencies @ 10%	21,078
Overall total inc statutory fees & assessment work (estimate)	231,861

Table 1 – Overall summary of cost estimate for studies/surveys, preparation of environmental statement, submission of planning application/MMO licence application.

23. If indications are that the likely outcome is positive it is proposed that a procurement exercise is undertaken to select a suitable operator to extract sand from 2022 onwards.
24. It is recommended the Committee approve a fully funded budget addition to the revenue budget in respect of 'St Anne's foreshore sand extraction development studies and regulatory applications' in the sum of £232,000, (£70,000 in 2020/21 and £162,000 in 2021/22) to be met in full, from the Funding Volatility Reserve to allow for the undertaking of the necessary studies, preparation of an environmental statement and submission of planning and MMO applications in order to seek authority to extract sand from St Annes foreshore.

PROCUREMENT

25. The value of the contract to undertake the surveys/studies, prepare the applications and oversee their progress (excluding regulatory fees) is circa £124,000 which is deemed to be a large contract in the council's contract procurement rules. If the council was to seek competitive quotations from other consultants, it is doubtful that given the specialist nature of the work that there will be suitable competition to make the

inevitable time delay worthwhile. Furthermore, if a new consultant was selected there would be potential delays and complications in the transfer of information and knowledge from the current consultancy team.

26. The Contract Procedure Rules apply to the engagement of consultants, with the proviso that in circumstances requiring flexibility or where there are specialised needs, the relevant director may agree alternative arrangements with the Chief Executive. In this case it has been agreed by the Chief Executive that the best interests of the council would be served by awarding the contract to Heaton's with the support of Golder Associates, providing members support the request for a funded revenue budget increase to cover the cost of the commission.

IMPLICATIONS	
Finance	The report recommends approval of an addition to the revenue budget in respect of 'St Anne's foreshore sand extraction development studies and regulatory applications' for 2020/21 and 2021/22 in the sum of £232,000, to be met in full, from the Funding Volatility Reserve (£70,000 in 2020/21 and £162,000 in 2021/22).
Legal	The council cannot recommence sand extraction until it has the required marine licence and planning permission.
Community Safety	There are no implications
Human Rights and Equalities	There are no implications
Sustainability and Environmental Impact	The preparation of the Environmental Statement will ensure that the environmental impacts of sand extraction are identified and assessed as part of the regulatory process to seek permission to recommence operations.
Health & Safety and Risk Management	There are no implications

LEAD AUTHOR	CONTACT DETAILS	DATE
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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Document name		Council office or web address

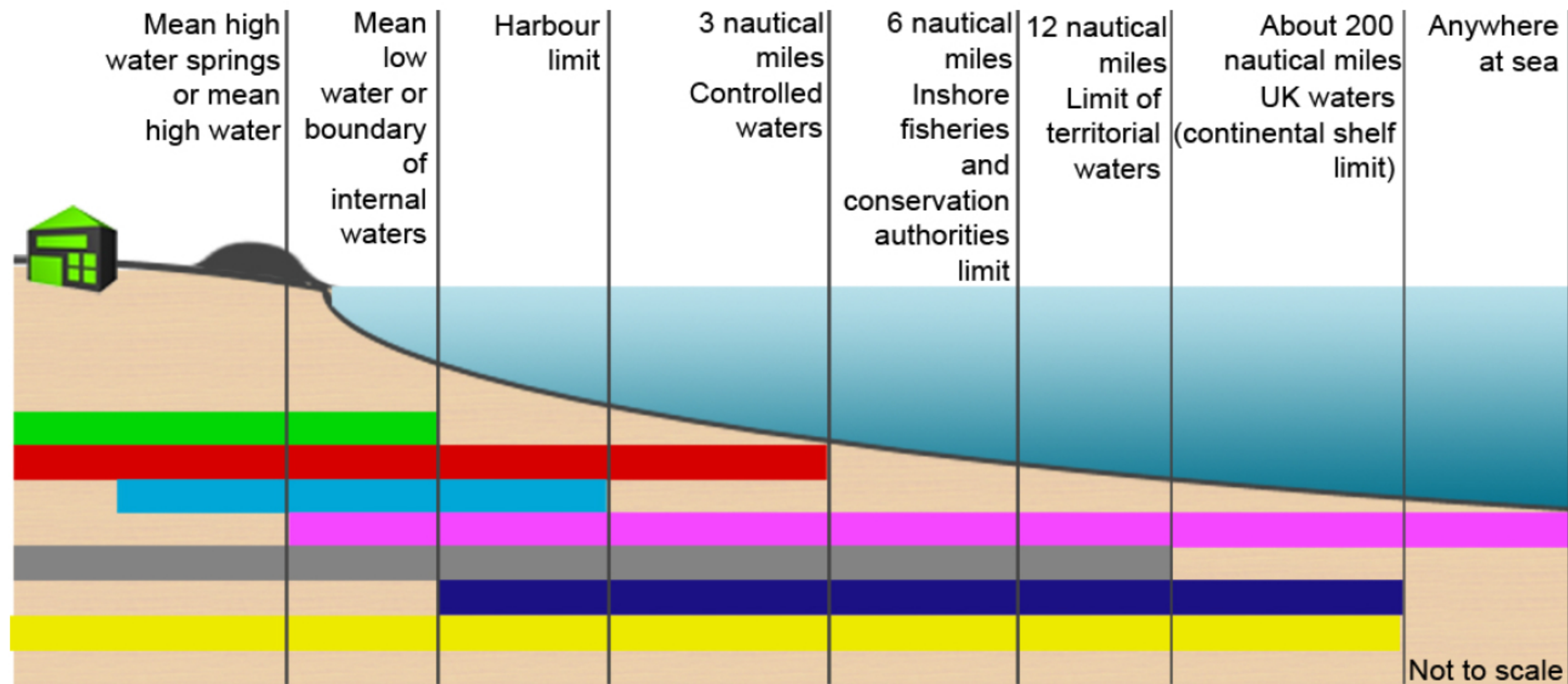
Attached documents:

Appendix 1 - Geographical extent of principal marine works controls: England & Wales

Appendix 2 - Briefing note re sand extraction studies

Appendix 3 - Cost breakdown of fees/disbursements

Geographical extent of principal marine works controls: England and Wales



Town and Country Planning Act 1990

Land Drainage Act 1991 and Water Resources (Industry) Act 1991

Local harbour powers (if within harbour limits)

Marine and Coastal Access Act 2009

Transport and Works Act 1992 (large scale projects)

Petroleum Act 1998 (oil and gas-related works)

Electricity Act 1989 or Energy Act 2004

Landowner or The Crown Estate consent
Planning Act 2008

BRIEFING UPDATE NOTE

SANDWINNING AT ST ANNES FORESHORE

Introduction

Heatons are a minerals focused planning consultancy acting for both independent and blue-chip minerals operators in the UK with offices in Nottinghamshire, Shropshire and Lancashire. Heatons are supported on this project by Golder Associates who are an environmental consultancy.

Background

The St Annes Foreshore sandwinning site has been in operation since the 1970s and is an important supplier of sand into the region.

In order to restart the sandwinning operation on the foreshore, it will be necessary to obtain planning permission from Lancashire CC (LCC) and a Marine Extraction Licence from the Marine Management Organisation (MMO).

Progress during 2020

Following an initial meeting between Fylde BC (FBC) officers and LCC in January this year to explain the background to the scheme and seek feedback from LCC officers, an Environmental Impact Assessment (EIA) Scoping report has been drafted which sets out the proposed scope of works for the above submissions. This is due to be submitted to LCC and the MMO this month (October). Upon receipt of the report, LCC and the MMO will consult with various organisations to determine whether the proposed scope is acceptable or whether there are areas that require additional assessment. LCC and MMO will then produce Scoping Opinions to confirm their position and the precise scope of EIA that will be required to be undertaken and presented to them in the form of an Environmental Statement.

The planning and MMO licence applications will need to be supported with Environmental Impact Assessments. A schedule of proposed costs has been provided for undertaking this work.

A meeting was held with the Team Leader of LCC Minerals in September 2020 to update LCC on progress with EIA Scoping, outline the next steps and to discuss any queries they had. Feedback was generally positive from LCC whilst recognising that there will be planning policies that have to be addressed and the need for a particular focus on any potential ecological effects on the European Designated sites. LCC also confirmed that the site made an important contribution to sand provision (and housebuilding) within the north-west.

Given that the extraction site lies within an area of European ecological designations, it will be necessary to demonstrate that no significant effects would result from the operations on the European sites.

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Natural England (NE) will be the lead consultee for LCC and MMO in terms of assessing effects on biodiversity. Baseline ecological surveys of the site have been undertaken by Golder this summer to ensure that the information was recorded during the appropriate seasonal window.

A follow up meeting with NE was attended in September 2020 by consultants and FBC officers, to update NE on progress and to seek feedback on the site survey undertaken in the summer and to confirm their thoughts on the sufficiency of bird survey datasets proposed to be used in the assessment.

Whilst the consultants are confident that no significant gaps are present in the ecological data they have or could acquire, following feedback from the MMO and NE at recent meetings, it is considered that undertaking a survey of wintering birds over the next few months (Oct 2020 to Mar 2021) would ensure that the data being used to inform the assessments is as robust as possible, minimising the risk of NE or other organisations raising questions at a later stage.

A meeting with the MMO and LCC was also convened in September 2020 to establish responsibilities going forward. A concordat exists whereby the MMO may defer certain decisions to LCC but, in this case, applications will need to be submitted to both LCC and the MMO although there are likely to be several consultees in common and there will be regular liaison between the MMO and LCC.

Next Steps

The preparation of the planning application, licence application and Environmental Statement will take around 6 months. Following submission, it would be usual for the determination of the applications to then take a further 4-6 months minimum.

A schedule of costs has been provided to outline the costs of undertaking the various assessments and preparing the application documents. The schedule of costs and scope may require amending following receipt of EIA Scoping Opinions from LCC and MMO. However, from experience, Heatons and Golder consider that the proposed scope of work is reasonable.

In order to aim for a determination of the planning application and MMO licence by first quarter of 2022, it would be necessary to commence preparation work during January 2021 at the latest. Over-wintering bird survey data could be collected during the intervening period of October 2020 to March 2021, allowing the applications to be finalised for submission during summer 2021.

Outcome

In terms of outcome, meetings with LCC, MMO and NE to date have been positive. However, it should be recognised that this is not a straightforward proposal, in particular given the fact that the operations would take place within areas of European ecological designation. However, given that the site has operated successfully for several decades without any obvious ecological or other impact, together with the regional importance of the site for providing a long term secure supply of sand in the north-west, Heatons and Golder are of the current view that the grant of planning permission and the securing of a marine extraction licence is more likely to succeed than not. As preparation of the EIA progresses, regular updates will be provided to advise FBC Officers and Members further.

Dated: 7 October 2020

APPENDIX 3 – COST BREAKDOWN OF FEES/DISBURSEMENTS

PLANNING APPLICATION / ENVIRONMENTAL STATEMENT	£
Planning Application (Heatons)	
Planning Application, Forms and Site Visits	7,700
Environmental Statement (Heatons / Golder)	
Heatons	
Project Management, EIA Review, Core ES Chapters, Landscape & Visual Impact, Drawings, Non-Technical Summary and Coordination	34,750
Golder Associates	
Air Quality, Coastal Geomorphology, Water Environment, Flood Risk Assessment, Ecology & Biodiversity, Wintering Bird Surveys (inc costs), Habitats Regulations Assessment, Water Framework Directive Assessment and Technical Review (Golder ES Chapters)	57,583
Other Consultants	
Noise, Transport	6,750
Transport	
TOTAL FEE (EIA / PLANNING APP)	106,783
Disbursements (Estimate)	
OS Mapping, 3rd Party Data	8,000
Allow for Meetings & Liaison (Estimate)	
Heatons (allow 3 hrs/month)	5,130
Golder (allow 2 hrs/month)	3,870
TOTAL	9,000
SUB TOTAL ENVIRONMENTAL STATEMENT + PLANNING APPLICATION (Estimate)	123,783

STATUTORY/REGULATORY FEES	£
Lancashire CC (Statutory)	
Planning Application Fee	78,000
Marine Management Organisation (Estimate)	
Licence Application (£122/hr)	9,000
SUB TOTAL STATUTORY/REGULATORY FEES (Estimate)	87,000