

DECISION ITEM

| REPORT OF | MEETING | DATE | ITEM NO |
|---|----------------------------------|------------------|---------|
| DEVELOPMENT SERVICES DIRECTORATE | OPERATIONAL MANAGEMENT COMMITTEE | 10 NOVEMBER 2020 | 5 |
| SAND EXTRACTION - ST ANNES FORESHORE | | | |

PUBLIC ITEM

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

SUMMARY

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

The Committee are requested to:

1. Recommend to Finance and Democracy Committee approval of a fully funded 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;
2. Subject to 1 above, approve the commencement of the proposed development studies as identified in section 22 of this report in the sum of £232,000, with the works being funded from the Funding Volatility Reserve;
3. Approve the procurement approach detailed in section 25/26 of this report to appoint Heaton Planning (Heatons) together with the environmental sub-contractor, Golder Associates, to deliver the sand extraction development studies and regulatory applications;

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 requested that the Committee recommend to the Finance and Democracy Committee approval of a funded revenue budget increase 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 Heatons 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 | |
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| Finance | The report requests a recommendation to the Finance and Democracy Committee 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