

Marine Management Organisation and Works Licensing in the Broads
Report by Environment and Design Supervisor

Summary: The scope of Marine Licences granted by the Marine Management Organisation (MMO) for works in the Broads executive area has strong potential to overlap and interact with the Broads Authority's Works Licensing scheme. The requirement for an Authority Works Licence is set out in the Broads Act (1988). The relatively new requirement for a Marine Licence for certain works within the Broads area means clear guidance is required to applicants. Approval of licenses for the activity of directly mudpumping sediment from marinas or boatyards into the main navigation has not been assessed in terms of navigation and environmental impacts at the Broads-wide scale. The approach taken by the statutory consenting bodies over this particular sediment management technique, needs to be sensitive to Broads specific requirements and conditions.

This report seeks to update members on the current position with regards to MMO licensing, and member's views are sought on the issue of direct pumping of sediment into the navigation as set out in Section 4. Direct pumping raises questions over wider sediment management in the Broads and the Authority's process of approving Works Licences where environmental impacts are uncertain due to lack of evidence.

1 Marine Management Organisation

- 1.1 The Marine Management Organisation (MMO) is an executive non-departmental public body established and given powers under the Marine and Coastal Access Act 2009. This brings together, for the first time, key marine decision-making powers and delivery mechanisms. The MMO began operating in April 2010, incorporating the work of the Marine and Fisheries Agency (MFA) and acquiring new roles, powers and functions previously associated with the Department of Energy and Climate Change and the Department for Transport. Establishing the MMO marked a fundamental shift in how activities in the marine area are planned, regulated and licensed.
- 1.2 The marine licensing system under the Marine and Coastal Access Act 2009 has been in force since 6 April 2011. A marine licence is required for activities involving a deposit or removal of a substance or object in the UK marine area, as defined in section 42 of the act. Under these terms, the marine area is the area below the mean high water springs mark, and in any tidal river to the

extent of the tidal influence. For the Broads this means all rivers to the limit of navigation are effectively included in the licensable “marine area”.

- 1.3 Common activities likely to require a marine licence in the Broads (all areas below mean high water springs) includes dredging, cable laying, construction work, disposal of dredged material, operation of divers, work on underwater pipelines and removal of obstructions. In addition to the marine licensing requirements, such activities may also require consents issued by other regulatory authorities such as the Environment Agency, Natural England and local planning authorities. Applications for a marine licence will be subject to assessment under the Habitats Regulations and Water Framework Directive and may be subject to an environmental impact assessment. A tri-partite meeting is being arranged in the early summer between Broads Authority, MMO and Natural England to discuss regulatory overlap and appropriate decision-making for such applications individually and collectively across the Broads.

2 Broads Authority Exemptions as a Harbour Authority

- 2.1 All dredging and disposal activities below the mean high water springs mark require a marine licence unless they qualify for an exemption. The Broads Authority, as a Harbour Authority, is exempt from requiring a marine licence to dredge and deposit dredged material, where the activity is for the purposes of managing the navigation, as outlined in the Norfolk and Suffolk Broads Act (1988). The Broads Authority must however demonstrate to the MMO's satisfaction that the sediments are non-hazardous.
- 2.2 In addition to dredging, other maintenance activities conducted by the Broads Authority in managing the navigation are also exempt from marine licensing.

3 Works Licenses issued by the Broads Authority

- 3.1 As stated in Section 11 of the Norfolk and Suffolk Broads Act 1988, works carried out within or adjacent to the navigation area, which includes the river channel, riverbanks and the Haven, and which will interfere with or be likely to interfere with navigation are required to have a Works Licence, see Appendix A. Examples of works which will require a works licence are dredging, river crossings for services, bridge or bridge abutment works, fendering works as well as scaffold erection, diving surveys, quay heading construction or repair, erosion protection, jetties/pontoons and construction of outfalls.
- 3.2 The granting of a Works Licence does not absolve the applicant from the requirement to obtain any other licences, permissions etc required by any other legislation e.g. planning consent, flood defence consent, MMO marine licence or consent under the Habitats Regulations. This is not an exhaustive list of consents likely to be required and applicants are strongly recommended to seek further guidance from the individual consenting body, as appropriate.
- 3.3 To provide consistent advice and guidance to applicants to the Authority's own Works Licensing system, the interaction with the MMO Marine Licence

needs to be very clear. All proposed works which will interfere with or be likely to interfere with navigation in the Broads are required to have a Broads Authority Works Licence. Given the overlap of the scope of the two licensing schemes, it is also likely that a MMO marine licence will also be required.

- 3.4 Exemption from MMO marine licence for private or commercial applicants can be gained if the proposal is:
- navigational dredging of up to 500 cubic metres of material no more than 3 times in a 12-month period and in a previously dredged area; or
 - constructing moorings or pontoons (less than 30 square metres).
- 3.5 The scope of both the BA and MMO licensing schemes does not absolve the potential requirement for the raft of other consents for construction activities on land or water. For example, the disposal and/or use of dredged material on land requires consideration under the Waste Framework Directive, as regulated by the Environment Agency through their Environmental Permitting. For the Broads Authority's own work, we have either environmental permits or an appropriate exemption in place for all dredged arisings that gets placed on land.
- 3.6 Consultation between the statutory bodies, including the Broads Authority, exists for most of these environmental and operational consents. For applications in the Broads executive area, the Authority can act as a statutory consultee as a harbour authority and/or a local planning authority, depending on the consultation. Under the Conservation of Habitats and Species Regulations 2010 (the "Habitats Regulations") the Broads Authority is a competent body, which requires it to consider or review its permissions for works, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected.
- 3.7 The Broads Authority's process for approving Works Licences requires the application form to be completed by the Landowner or his/her agent, be accompanied by a location plan, plan(s) and section(s) of the works and a method statement describing how the works are to be carried out. In terms of assistance to applicants, relevant officers of the Authority will be able to provide general guidance as to the Works Licence process and on the range of other consents likely to be required. Each regulatory body provides their own specific guidance notes, and each relevant consent required needs to be addressed individually at the applicant's expense. Works Licences are determined by the Environment and Design Supervisor, as set out in the Arrangements for the exercise of powers agreed by the Broads Authority, and may be subject to conditions.
- 3.8 Following this process of consultation with members, and direct meetings with MMO staff, a review of the current Works Licence guidance is required to update information the Authority passes to applicants.

4 MMO Licensing Test case of Mudpumping Directly into the Main River

- 4.1 The practice of physically moving bed sediment within a waterbody, for navigational purposes, is a management technique used in inland and marine waterways. Sediment can either be moved through ploughing, water injection dredging or mudpumping. The sediment is not removed from the aquatic system and the action of water flow is frequently the means by which the sediment is dispersed. In a UK Environmental Permitting sense, the Waste Framework Directive does not class un-contaminated sediment moved in this way as a waste, which it does if the sediment is deposited or used on land. In 2007 the Broads Authority conducted a water injection dredging trial in the Lower Bure. Specialist contractors used a vessel to inject low-pressure water jets into the surface sediments to fluidise the sediment and thus allow the ebb tide to carry the sediment downstream to the sea. To gain consent from Natural England, a significant monitoring and modelling programme was put in place by the Authority to help understand the fate of the sediment and its potential impact on the European protected conservation features of Breydon Water. Prior to the water injection trial, no Works Licence for such sediment moving activity has ever been approved by the Broads Authority, given the uncertainty on the fate of the sediment and impacts on the navigation.
- 4.2 A test case in the Broads for a Marine Licence application was submitted to the MMO in 2013, for mudpumping bed sediment out of a marina directly into a main river. Given the relatively low dredge volume in MMO terms, time limitation, relevant licensing assurances and evidence from the applicant, and consent from Natural England, the MMO approved the application. An application for a Works Licence was subsequently submitted. Following the Authority's consultation with the Environment Agency and Natural England, a Works Licence was also granted for the activity.
- 4.3 Given the approval of Licences for this first applicant, subsequent applications for this activity in other locations in the Broads are expected. Whilst one applicant in a geographically favourable area may be acceptable, a range of applicants pumping sediment into the main rivers across the whole of the Broads system presents a significant management and licensing challenge. The navigational impact of additional sediment entering the main rivers runs counter to several objectives of the Authority's Sediment Management Strategy. Several European designated Broads waterbodies are highly connected or are part of the navigation area, including Breydon Water. The in-combination effects on these European protected conservation sites, arising from such licensed sediment movement also comes into play when granting applications.
- 4.4 There is limited existing information on Broads wide sediment dynamics and sediment budgets which can reveal the detail required to assess the individual significance of such applications on navigation or ecological impacts. The uncertainty over if or where sediment pumping into the main river may be acceptable is therefore high. Individual assessment of applications would only reveal individual impacts, and a first come, first served approach to licensing may generate in-combination effects that have a collective significant impact.

As such, the current MMO and Broads Authority licensing runs the risk of approving applications in a piecemeal way, that lacks evidence to satisfy navigational and ecological policy requirements.

- 4.5 Given the wording of Section 11 of the 1988 Act, officer's view is that any dredging works by third parties where material is deposited in the navigation area is likely to interfere with navigation and that therefore applications for works of this nature should not be granted.
- 4.6 With this in mind, and the additional concerns of cumulative impacts on the special features of the broads, member's views are sought on this position, and the advice to be given to officers in determining such applications.

Background papers: Broads Sediment Management Strategy <http://www.broads-authority.gov.uk/looking-after/managing-land-and-water/Dredging/sediment-management-strategy>

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Broads Plan Objectives: NA1

Appendices: APPENDIX A – Extract of Norfolk & Suffolk Broads Act 1988 – Part 2 - Section 11 and 12

Section 11, Norfolk and Suffolk Broads Act 1988

- (1) No person shall construct, alter, renew or extend any works, or undertake any dredging, within or adjacent to the navigation area unless –
 - a. Neither the work in question nor the manner in which it is carried out will interfere with navigation in any part of the navigation area or of the Haven or be likely to do so; or
 - b. That person –
 - i. Holds a licence under this section authorising the work (a works licence)
 - ii. Complies with the conditions (if any) attached to the works licence; and
 - iii. Carries out the work in accordance with the approved plans, section and particulars

Section 12

- (1) Any person who, without reasonable excuse, contravenes section 11(1) of the Act shall be guilty of an offence and liable to summary conviction to a fine not exceeding level three on the standard scale.
- (2) Where it appears to the Authority that any person is contravening section 11(1) it may by notice require him to take, within such reasonable time as may be specified in the notice, such steps to bring the contravention to an end as may be so specified.
- (3) The steps specified in a notice under this section may include the removal of any works and the restoration of the site in question to its former state.
- (4) If any person to whom notice is given under this section fails without reasonable excuse to comply with the requirements of the notice, the Authority may take the required steps and recover from him, as a civil debt, all reasonable costs incurred by it in taking those steps.