

OVERVIEW & SCRUTINY COMMITTEE

CHAIRMAN: Cllr Mike Haines

DATE: 4 March 2019
REPORT OF: Principal Delivery Officer
SUBJECT: South East Devon Habitat Regulations Executive Committee
PART I

RECOMMENDATION

That the summary of South East Devon Habitat Regulations Executive Committee evidence, governance and decisions is noted.

1. PURPOSE

- 1.1 To consider the background and reasons for forming the joint South East Devon Habitat Regulations Executive Committee, as well as associated governance arrangements.

2. THE HABITAT REGULATIONS

- 2.1 The European Habitats Directive has been transposed into UK law through the Conservation of Habitats and Species Regulations (the 'Habitat Regulations'). The most recent version of the Habitat Regulations was published in 2017 and is available at the following web link:
http://www.legislation.gov.uk/ukxi/2017/1012/pdfs/ukxi_20171012_en.pdf
- 2.2 The Habitat Regulations require that councils (as 'competent authorities') must only approve plans or projects if they will not adversely impact on designated European Sites. Whether that impact would occur needs to be assessed both with regard to individual plans or projects and the combined impacts of multiple plans or projects.
- 2.3 Exiting the European Union is not expected to alter the relevance of the Habitat Regulations and the provisions of the Habitats Directive will continue to be reflected in UK law.

3. EVIDENCE OF PRESSURE ON OUR EUROPEAN SITES

- 3.1 Natural England are the Government's nature conservation body. They are responsible for advising councils on how to apply the Habitat Regulations. Local authorities must have regard to their advice.

TEIGNBRIDGE DISTRICT COUNCIL

- 3.2 In 2010 Natural England advised Teignbridge, Exeter and East Devon's councils that they should consider the potential impacts of development growth on the protected habitats and species of the Exe Estuary, Dawlish Warren and East Devon Pebblebed Heath European Sites (see Appendix 1).
- 3.3 On the Exe, for example, the area qualifies as a European Site for regularly supporting at least 20,000 waterfowl, including Avocet and Brent Goose, that rely on being able to rest and feed over winter in order that they have the energy to migrate and breed in Spring. This is a finely balanced situation where human disturbance can result in mortal consequences for the protected species. If the frequency of disturbance might increase as a result of new development, the Habitat Regulations require that the associated implications for the protected wildlife must be mitigated.
- 3.4 In other local authority areas, failure to meet the requirements of the Habitat Regulations has led to an embargo on development until the matter can be resolved. In Teignbridge this would be likely to significantly dilute our housing land supply, invoking the 'presumption in favour of sustainable development' and introducing scope for unplanned and unallocated housing sites to come forward in parts of the district where there would not be significant impacts on the European Sites.
- 3.5 A range of studies were commissioned to investigate further. Drawing on extensive experience from across the UK, leading experts in the field assembled robust evidence that included:
- 2000 local postal questionnaires** establishing households' likelihood of visiting the sites depending on how far away they live.
- Visitor surveys on the sites** to understand where people were travelling from and how they were using the sites.
- Disturbance studies** to understand how often protected species were being disturbed and by what activities.
- 3.6 All of this evidence led to a shared scientific understanding of the most harmful recreational activities observed on the European Sites. It also resulted in an expert assessment of the additional pressure that would apply to the Sites and their designated features as a result of housing and population growth.
- 3.7 This information fed into the Local Plan making process across the three authority areas. It was necessary for each Local Plan to incorporate firm policies that would only allow new development to come forward where there would be no 'likely significant effect' on the Sites or where the impacts of additional recreational pressure from new residents could be mitigated.

4. JOINT STRATEGY FOR HABITAT MITIGATION

- 4.1 In 2014 a joint South East Devon European Site Mitigation Strategy (SEDESMS) was finalised for Teignbridge, Exeter and East Devon. This drew

TEIGNBRIDGE DISTRICT COUNCIL

together the scientific evidence that had already been prepared. At the same time it harnessed international expertise and real-world examples in order to arrive at a suite of mitigation measures whose implementation would prevent the condition of the European Sites from worsening as new development came forward. These measures drew widespread support from experienced stakeholder organisations including Natural England, the Exe Estuary Management Partnership, Devon Wildlife Trust and the RSPB.

- 4.2 The Mitigation Strategy set out that new development within 10km of the European Sites would result in significant impacts on the Sites' protected features. This established the basis for the three planning authorities to collect contributions from development within the 10km zones (Appendix 2) so that they could fund the Strategy's mitigation projects.
- 4.3 With measures identified; contributions being collected; and a route map for the public authorities to mitigate development pressures, the councils put themselves in the position of being able to continue granting housing planning permissions.
- 4.4 The Mitigation Strategy and associated evidence are available at the following web link:

<https://www.teignbridge.gov.uk/planning/biodiversity/exe-estuarydawlish-warren-habitat-mitigation/evidence-base/>

5. JOINT GOVERNANCE OF THE MITIGATION STRATEGY

- 5.1 By 2015 the three Councils were in a position where they had joint evidence, a joint strategy and were collecting funds associated with shared habitat mitigation projects. A structure for implementing the joint approach was required. Building on the experiences of other local authorities managing similar cross-boundary issues, the three authorities formed a new South East Devon Habitat Regulations Executive Committee (HREC).
- 5.2 Formation of the HREC was approved by Teignbridge's Executive Committee on 8 December 2015. In summary, the following decision was made:
 - a) Establishment of the HREC
 - b) Approval of Terms of Reference and Rules for the HREC
 - c) Delegation of all necessary powers to deliver mitigation measures in line with the Habitat Regulations, except for compulsory purchase powers
 - d) Appointment of the Portfolio Holder for Planning and Housing as the Council's member of the HREC.
 - e) Delegated authority to the Solicitor to the Council, in consultation with the Group Leaders and Democratic Services Manager, to make any further amendments to the Terms of Reference and Rules of Procedure
- 5.3 Further details of the Executive decision and the Terms of Reference and Rules of Procedure are available at the following links:

TEIGNBRIDGE DISTRICT COUNCIL

<https://www.teignbridge.gov.uk/committee-meetings-and-agendas/executive-meetings/executive-2015-2016/8-december-2015/>

<http://eastdevon.gov.uk/media/2537580/cjune18part9.pdf>

5.4 The HREC has met since June 2016. Its Terms of Reference provided for at least four meetings in the first year of operation. Since the second year began the HREC has been able to determine the frequency of meetings in line with projected workload. With a requirement for an annual business plan, the HREC needs to meet approximately once a year as a minimum but usually more often.

5.5 East Devon District Council acts as the HREC financial accountable body and provides much of the necessary democratic services support. Agendas and minutes of HREC meetings are available at the following link:

<http://eastdevon.gov.uk/council-and-democracy/committees-and-meetings/south-east-devon-habitat-regulations-executive-committee/>

5.6 Whilst Executive functions have been delegated to the HREC, a joint scrutiny committee has not been formed. Each of the councils has retained its own scrutiny powers. However, no decision has been called-in by any of the authorities' scrutiny committees to date.

6. IMPLEMENTING THE MITIGATION STRATEGY

6.1 Across the three European Sites, the Mitigation Strategy identified 60 measures that need to be implemented (See Table 26 from p218). Progress with the measures and annual business plans is reported to the HREC. The position as at April 2018 is summarised in the table at Appendix 3 and items that were of interest when this report was requested are considered in more detail below.

Habitat Mitigation Officers

6.2 October 2018 marked two years since two Habitat Mitigation Officers (HMO) were appointed. The main day to day duties of the HMOs continues to focus heavily on public engagement and education across the three protected sites. Close working with project partners further enhances understanding and knowledge of the European Sites.

6.3 The HMOs help to promote the importance of the European Sites. This includes explaining the Exe Estuary Wildlife Refuges and codes of conduct.

6.4 The partnership approach of the HMOs has included work with the Wetland Bird Survey (WeBS) team, the Exe Estuary Management Partnership, the Royal Yachting Association Green Blue, and liaison with conservation/land management teams across the region (EDDC, TDC, RSPB, DWT and Pebblebed Heaths Conservation Trust).

TEIGNBRIDGE DISTRICT COUNCIL

Patrol Boat

- 6.5 Ensuring people are following agreed codes of conduct and helping them to understand and respect the Exe Estuary Wildlife Refuges is a fundamental component of the long-term strategy to reduce overwintering bird disturbance on the Exe Estuary. The patrol boat is a key element within this and as such needs to be operational regularly during the winter. The mitigation strategy recommended delivery of an up-to date and well equipped patrol boat, with an appropriate level of staff resources available.
- 6.6 The patrol boat was launched in August 2018 and the HMOs have ensured there is a visible and capable Local Authority presence on the water. This helps to deter anti-social behaviour and speeding. The patrol boat is operated from Exmouth marina, in close co-operation with the Harbour Authority, National Coastwatch Institution and the RNLI.

Wildlife refuges

- 6.7 The wildlife refuges are essentially a request to the thousands of people using the Exe Estuary to act responsibly and refrain from using two critically important ecological areas. The areas were determined (and substantially adapted) after an extensive, 9 month consultation which included 18 specific user group meetings, two general meetings, a dedicated website and two online surveys.
- 6.8 The protected species depend on the estuary for their survival. The evidence, coupled with the precautionary approach required by legislation, makes it clear that doing nothing is not an option. No fines or enforcement are in place and therefore the success of the voluntary approach will depend on the continued adoption of the refuges and education of people using the estuary for their recreational pursuits.
- 6.9 The wildlife refuges are identified at Appendix 4. They represent just 3.5% of the Exe Estuary European Site throughout the year (at Dawlish Warren) and a total of 7% for 14 weeks of the year (when including the Exmouth refuge area).

Monitoring

- 6.10 Monitoring is essential to ensure the successful delivery of the mitigation work, to ensure approaches are working as anticipated and to identify whether further refinements or adjustments are necessary. As the individual projects are delivered, monitoring can inform where resources can best be allocated.
- 6.11 The monitoring programmes as recommended in the mitigation strategy are therefore aimed at ensuring mitigation effort is focused and responsive to changes in access, and that money is well-spent and correctly allocated. The monitoring is integral to the mitigation 'package'.

TEIGNBRIDGE DISTRICT COUNCIL

- 6.12 As outlined in the approved 5Yr Delivery Programme, a region-wide monitoring programme of visitor numbers, behaviour and activities at the protected sites is planned for 2020-21 and every 5 years thereafter. The wildlife refuges are currently being monitored as part of a 3 year programme to ascertain their effectiveness, with annual reporting to HREC. The Delivery Programme is available at the following link:

<http://eastdevon.gov.uk/media/1779159/290616-south-east-devon-hrec-agenda-public.pdf>

- 6.13 In addition, there are site specific monitoring projects underway, including species and habitat monitoring at Dawlish Warren and visitor counters have been installed at Dawlish Countryside Park SANGS.

7. NEXT STEPS

- 7.1 The next HREC meeting is scheduled for 29 April 2019. Included on the agenda will be:

- Project delivery annual report
- Financial performance annual report
- Annual business plan
- 5 year delivery programme
- New habitat mitigation website

Habitat mitigation website

- 7.2 A new habitat mitigation website is being prepared. It is understood that it will be available in advance of the 29 April HREC meeting. The website will help to enhance public understanding of many of the matters addressed in this report, including questions like:

- What and where are the European Sites?
- Why are they under threat, and what is the evidence?
- What is the strategy for responding and what measure are proposed?
- What mitigation measures have been implemented on each site?
- What are the future mitigation plans?
- How do I find out more about the HREC?

8. TIME-SCALE

- 8.1 The South East Devon European Site Mitigation Strategy relates to development plans for the next 15 years. However, many of the mitigation measures need to be put in place on an ongoing basis and the HREC has been established as a permanent committee.

9. OFFICER PRESENTATION

TEIGNBRIDGE DISTRICT COUNCIL

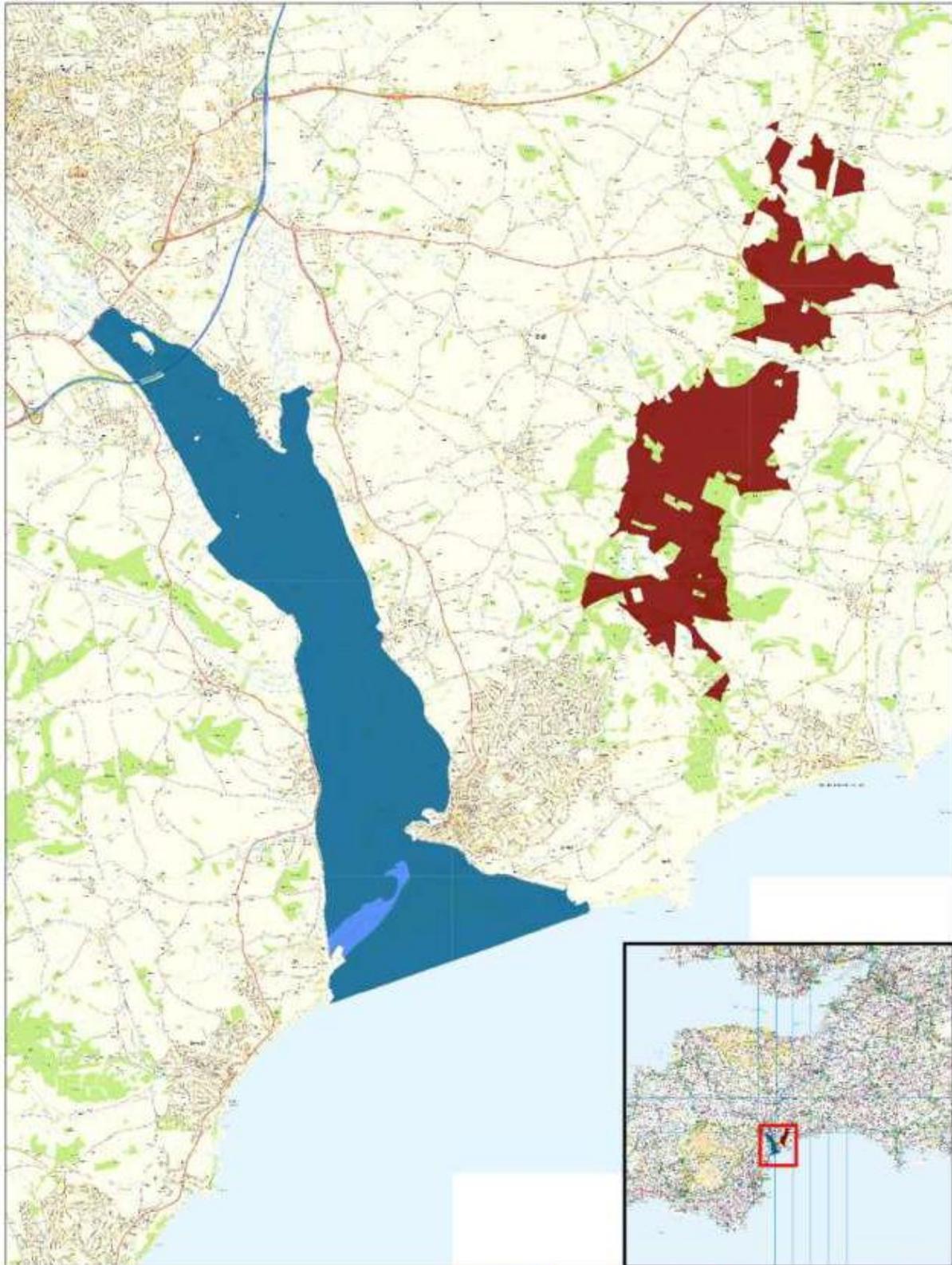
- 9.1 On 4 March Teignbridge and HREC officers will deliver a presentation providing further information about the European Sites, the evidence gathered, the Mitigation Strategy, Habitat Mitigation Officers' day-to-day role and how the HREC operates.

Fergus Pate
Principal Delivery Officer

Wards affected	<i>All outside Dartmoor</i>
Contact for any more information	<i>Fergus Pate</i>
Background Papers (For Part I reports only)	<i>Identified in report</i>
Key Decision	<i>No</i>
In Forward Plan	<i>No</i>
In O & S Work Programme	<i>Yes</i>

TEIGNBRIDGE DISTRICT COUNCIL

Appendix 1: South East Devon European Sites



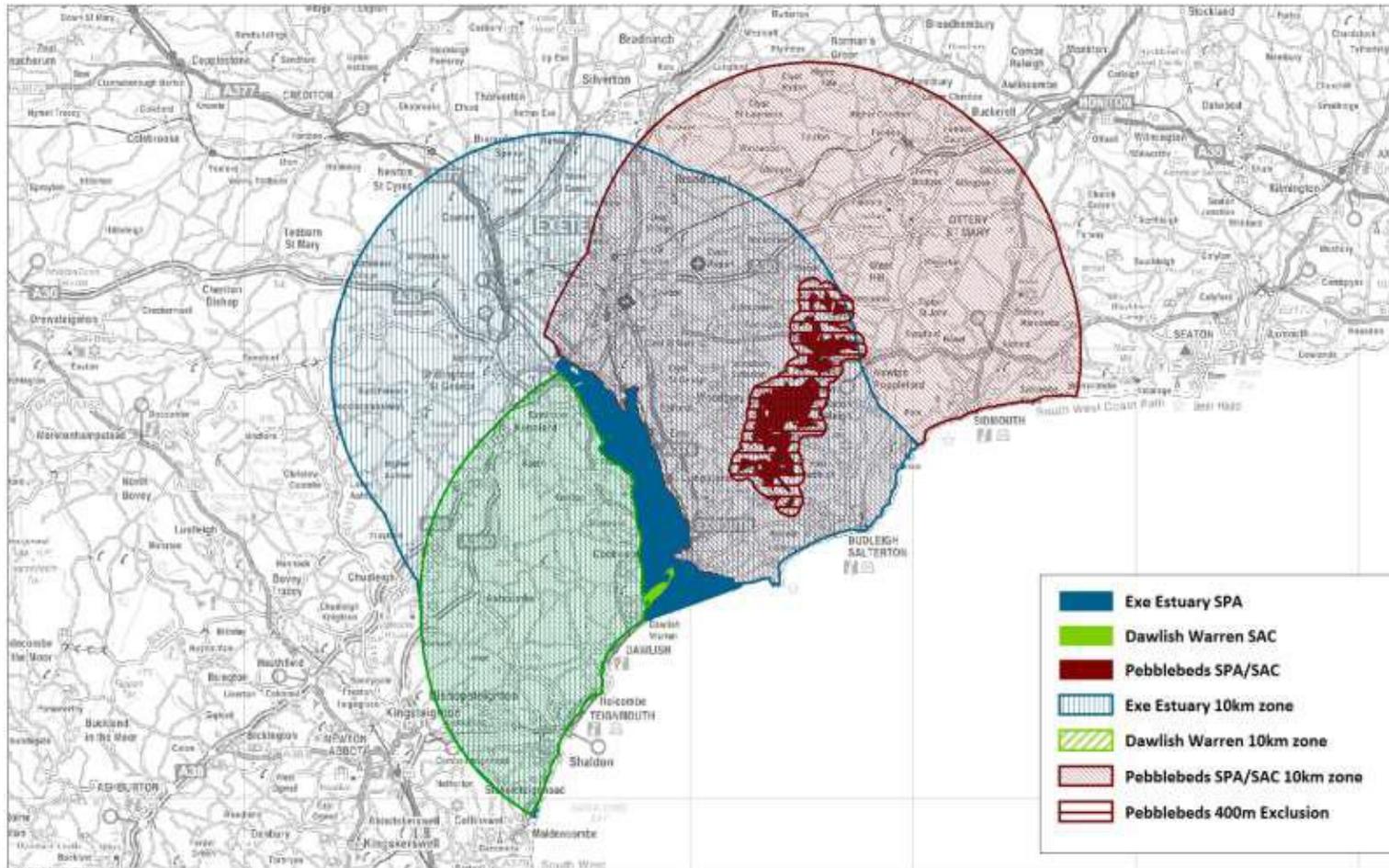
Map 1: Overview of the three European sites

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Appendix 2: 10km Zones



Map 19: Suggested Zoning for Developer Contributions

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**Appendix 3
2016-17 and 2017-18 Habitat Regulations Executive Committee
Annual Business Plans. Mitigation measures completed/ongoing**

Site	Measure	Status
Cross Site	Delivery Manager (Reports to HREC, delivery of annual business plan, line management)	Completed (ongoing)
Cross Site	Two Habitat Mitigation Officers (Public engagement/education across the protected sites)	Completed (ongoing)
Cross Site	HMO vehicle	Completed (ongoing)
Cross Site	Dog project (Positive, free membership scheme to promote responsible dog ownership)	Completed (ongoing)
Dawlish Warren	Changes to car parking management (To avoid increasing visitor pressure at most sensitive time of the year)	Initiated (ongoing) ¹
Dawlish Warren	Byelaw preventing fires and barbeques in buffer zone	Under investigation ²
Dawlish Warren	Carry out audit of information boards (Education tool – signage redesigned across the Warren)	Initiated: Delivery Summer 2018
Dawlish Warren	BBQ info at local retailers (Due to fire risk, no BBQs or fires are permitted at the Warren)	Initiated: Delivery Spring 2018
Dawlish Warren	Removal of Dog Control Order (Dogs on leads in buffer zone difficult to enforce)	Under investigation
Exe Estuary	Patrol boat (Presence on the water, reinforce codes of conduct, wildlife refuges, deter ASB, speeding)	Initiated (ongoing)
Exe Estuary	Disturbance monitoring (3 year monitoring, effectiveness of wildlife refuges)	Initiated (ongoing) ³
Exe Estuary	Update signs at public slipways (To reflect wildlife refuges, codes, speed limit, byelaws)	Initiated: Delivery Summer 2018
Exe Estuary	New interpretation boards (five boards) (See above)	Initiated: Delivery Summer 2018
Exe Estuary	Procurement, installation, maintenance of buoy markers. (To demarcate the wildlife refuges)	Initiated: Delivery Autumn 2018
Pebblebed Heaths	Maps highlighting sensitive areas (To inform promoted routes, signage, way marking, car parking)	In progress ⁴
Pebblebed Heaths	Dog bins	Completed (ongoing)
Pebblebed Heaths	Codes of conduct	Completed
Pebblebed Heaths	Boardwalks/ Path surfacing (Avoiding erosion of heaths and deterioration of wet heath due to runoff)	Initiated (ongoing) ⁵

¹ TDC are working to respond to the HREC recommendations.

² Pursuing with TDC Legal department, collection of evidence.

³ Monitoring started Feb 2018, 3 year contract.

⁴ Pebblebed Heaths Conservation Trust are working with a graphic designer to finalise.

⁵ Pebblebed Heaths Conservation Trust are working with a contractor to undertake 1st schedule of urgent works.

Appendix 4

Exe Estuary Wildlife Refuges



Exe Estuary

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