

Minutes of the meeting of the South East Devon Habitat Regulations Executive Committee held at Knowle, Sidmouth, on Wednesday 29 March 2017

Attendance list at end of document

The meeting started at 6.00pm and ended at 7.08pm.

***22 Public speaking**

The Chairman welcomed everyone present to the meeting.

The Executive Committee had received two questions on notice. The Chairman invited the first speaker to read out their submitted question (the speaker paraphrased the question at the meeting but is printed in full below).

Question received with notice – Jane Evans

'Please can the South East Devon Habitat Regulations Executive Committee demonstrate how the Public Consultation being conducted by the Exe Estuary Management Partnership (EEMP) on behalf of the South East Devon Habitat Regulations Executive Committee and Partnership (SEDHRP) has met the standard for a public consultation given the following information:

- a) The consultation event on 8 December 2016 is claimed to have been public. However the general public were not informed that it was taking place. It appears to have only been notified to people who are on the EEMP mailing list. This list is not a representative cross section of the general public or of the people who are likely to be affected by the proposed exclusion zones.
- b) No information on the proposed exclusion zones or project proposal was added to the EEMP website for months, despite it being claimed that the consultation was being undertaken. It was only after requests from Jane Evans to EEMP on 1 March 2017, 3 March and again on 7 March that any information was added to the EEMP website. This resulted in draft maps being added on 9 March, the project proposal on 10 March and supporting documents on 14 March. The minutes of the EEMP consultation event of 8 December 2016 were added to the EEMP website on 14 March. At the time this information was posted there were two weeks before the consultation was due to close.
- c) No press releases have been made by East Devon District Council, Exeter City Council or Teignbridge District Council advising that the Public Consultation has been taking place.
The press have not been informed about the public consultation so there have been no articles in the local newspapers.
- d) It was advised that the advertising for the public consultation event was made by social media. However no advertising for the public consultation has been located on any of the three councils' twitter accounts. Eventually a tweet was added to EEMP twitter account on 16 March.
- e) There is no poster at the edge of the proposed exclusion zone in Cockwood so users of the Cockwood foreshore have not been notified of the proposals.
- f) Some water sports associations, clubs and retailers that are listed on page 93 of the Exe Estuary Recreational Framework 2014 have still not been notified of the Public Consultation by EEMP.
- g) The format of the public consultation is informal meetings with the Exe Estuary Officer. Attendees are advised that comments will be taken to the SEDHRP. The

Exe Estuary Officer does not have a minute taker for the meetings. There has not been a circulation of the notes taken by the Exe Estuary Officer made following the meetings to the attendees so the attendees cannot see that their comments are being reported accurately to the SEDHRP.

- h) There is no questionnaire that may be completed by members of the public to contribute their comments to the public consultation.
- i) No information is available on how any responses are being collated, analysed or results published.
- j) No information is available on how the decision makers are assessing the responses and against what criteria.
- k) There is no engagement between the members of the South East Devon Habitat Regulations Executive Committee or the Partnership with the people who will be affected by the proposed exclusion zones or their representatives, for example various sport's national governing bodies. All engagement has so far been required to take place with the Exe Estuary Officer.'

The Chairman invited the Habitat Regulations Delivery Manager to respond to the points raised. The Delivery Manager responded to the question as submitted as follows:

- a) It should be stated that these consultations are in regard to Voluntary Exclusion Zones and so there is no set "standard" – it is not an exact science, although due diligence was shown in the approach. It was agreed with the Exe Estuary Officer that it was logical to begin by consulting with those user groups most likely to be impacted by the proposals. The event on 8 December was advertised to key stakeholders as well as in the public domain on websites, and social media. This consultation event was specifically targeted to user groups that regularly use the Exe Estuary for their activity, rather than occasional users.
The intention was to invite the input of local users who have good knowledge of the Exe and the areas that were particularly important for their activity - and to identify any potential impact on local businesses. There were a lot of specific (and sometimes conflicting) interests to take into consideration, so the consultation needed to be targeted in order to explore the best option for all parties.
- b) The consultation was publicised from mid-November on EEMP website, and specifically the first public event was publicised both by direct email invite and on the EEMP and Eventbrite websites from that date onwards.
Unfortunately, due to technical problems outside of EEMP's control, the website was unavailable between 20 December 2016 and 2 February 2017. It took longer to put up amended maps due to specific software issues at EEMP. These were available from 9 March and would remain available until the end of April.
The review of zonation was introduced a year ago, at the Winter Forum on 9 February 2016. The review was also advertised through the Exe Press newsletter, in the editions of spring 2016, winter 2016 and spring 2017. The newsletter had been distributed via post and email to approximately 2,000 people, and available free of charge at Tourist Information Centres, libraries, doctor's surgeries. The consultation was also advertised on Devon County Council's website. A review of zones of activity, codes of conduct and the consultation were part of a press release from the Local Authorities on 11 July and 4 November 2016
- c) This was a consultation which has primarily been advertised to key stakeholder groups through long established channels of communication at the Exe Estuary Management Partnership. In order to reach a wider audience, the Partnership had extended the consultation and would be issuing a press release within a day or so. The consultation would be re-publicised through partner authority media

contacts. However, we had no control over whether or how the newspapers used it - they may decide not to feature it. Advertising on posters and leafleting had been carried out in specific areas to reach out directly to people using the affected areas.

The consultation had been in local papers (such as The Exeter Daily online newspaper in November and Dawlish Gazette in March). The Exmouth Journal retweeted details of the consultation on 13 March.

- d) @Exeestuary tweeted/retweeted about the consultation on 17, 18, 21 November and 6 and 12 December. Tweets had also been sent about the Exe Press, which contained details of the consultation (this was also available on the EEMP website).
@Teignbridge had tweeted about the consultation on 18 November and 1 December. @PlanTeignbridge, @ExeterCouncil, @EEDGrowthPoint and @eastdevon had all tweeted / retweeted about the consultation. It had also featured widely on facebook accounts, with local stakeholders targeted.
- e) As mentioned above (c) posters have been put up at the Cockwood notice board and the Cockwood steps (also Starcross noticeboard0, by the Habitat Mitigation Officer. Users of the Cockwood foreshore are predominantly bait diggers and crab tilers. These users were some of the first to be contacted in face-to-face meetings with the Exe Estuary Officer. Other users such as anglers (and dog walkers) were already excluded from the area under the existing byelaw and codes of conduct.
- f) A small number of email addresses had been found to be out of date and either had been or were in the process of being amended by the Exe Estuary Officer.
- g) There was no specific requirement to publish the minutes of these meetings. However, the Exe Estuary Officer did take minutes during meetings and had always intended for these to be made available prior to the next stage of consultation. Minutes would be on the EEMP website by end of month, in conjunction with updated maps.
- h) As part of the extended consultation period, a questionnaire had been drafted and would be available online and by paper copy on request, by the end of the week.
- i) Details of next steps for the proposal of these voluntary zones would be included in the press release and on the dedicated consultation pages of the EEMP's website. When complete, results of the consultation would be also be published here.
- j) The criteria was very simple and was explained in the face to face user group consultations, on the EEMP website and was now included in the questionnaire:
The areas identified are sensitive areas for internationally important species and habitats – disturbance from human activity risks impacting upon those species and habitats. The responses will therefore be assessed against how any amendments to the proposals can meet the aims of protecting these areas and species.
- k) The Executive Committee had given delegated powers to the Habitat Regulations Delivery Manager to work on implementing the approved Annual Business Plan. As part of the Annual Business Plan, the Executive Committee had also approved the consultation on revised zoning and codes of conduct to be undertaken by the EEMP.
The Habitat Regulations Delivery Manager, Habitat Mitigation Officers, Dog Project Officer and EEO had all given presentations on the background to the work at the consultation meeting held at the beginning of December 2016. Officers from Natural England, the RSPB, EDDC Countryside Team, Devon Wildlife Trust and IFCA had also been present at the stakeholder meeting.

Arrangements were being made for as officers as possible to be present at the next general consultation meeting to be held on 20 April 17.

In accordance with the published constitution, meetings of the Executive Committee were open to the public and members of the public were able to engage by making statements or asking questions.

Under the Executive Committee's terms of reference in respect of questions submitted in advance, the questioner had the right to ask a supplementary question relevant to the original question printed above. In response to the supplementary question asked, the Habitat Regulations Delivery Manager advised that the consultation had been reviewed and extended as a result.

Cllr Rachel Sutton commented that the proposals had clearly generated a lot of public interest and therefore it was helpful that the consultation had been extended. The Chairman apologised if the original message regarding the consultation had not reached all users of the Exe.

The second person who had submitted questions on notice was invited to speak. The Chairman invited the Habitat Regulations Delivery Officer to respond after each question had been asked.

Questions received with notice – Vyv Game

- a) What is the evidence that sailing activities are having an impact on migrating birds in these areas?

Response: The Exe Disturbance Study 2011 was an extensive piece of survey work originally commissioned by the Exe Estuary Management Partnership. This clearly indicated that disturbance caused by current levels of recreational access (including sailing) was influencing the distribution and behaviour of birds on the Exe.

Extract from the Exe Disturbance Study 2011

"Using the counts of people and birds undertaken in this project for each survey location we find evidence that the number of birds fluctuates in relation to levels of access at Lympstone, Powderham, the Duck Pond and at Starcross South. Numbers of birds at these locations are lower on particular visits when levels of human activity are higher."

"After controlling for distance, tide and location, birds were more likely to take flight when the activity took place on the intertidal or on the water compared to the shore."

All birds were observed to take flight when the disturbance was close – indicating that appropriate exclusion zones would offer refuge and a "buffer" to disturbance. Nearly all sailing activities were observed to cause a disturbance response from the birds present.

"The work presented... shows that disturbance is reducing the habitat available to the birds and that the numbers of birds in certain parts of the estuary are related to the levels of access. Disturbance is currently therefore influencing the distribution and behaviour of birds on the Exe."

There was, therefore, reasonable doubt that recreational activities including sailing were not affecting the protected species and habitats present on the Exe. In order to meet their legal obligations under the Habitat Regulations, respective Local Plans had been assessed in terms of the likely significant effects of, in this case, residential development and an associated increase in recreational activity.

The local authorities of Teignbridge, Exeter and East Devon were following the precautionary principle which required that likely significant effects were mitigated before they had an impact. This was considered a correct and appropriate interpretation of their legal obligations. Doing nothing was not an option.

The speaker disputed this response and stated that there was insufficient evidence to support that sailing created a disturbance to the habitats.

b) Who has the legal authority over maritime activity on the Exe Estuary?

Response: The Harbour Authority & Marine Coastguard Agency (MCA) both had a legal duty in respect of maritime activity on the Exe. Additionally, the Marine Management Organisation (MMO) licensed, regulated and planned marine activities in the seas around the English Coast. The Devon and Severn Inshore Fisheries Conservation Authority was the statutory organisation which managed both commercial and recreational marine fishing activities from the shore out to the six nautical mile limit. Both the Harbour Authority and IFCA had been fully consulted on the proposed voluntary exclusion zones and had no objections to them.

In response to a supplementary question, the Habitat Regulations Delivery Manager advised that 'voluntary' exclusion zones were proposed.

c) How do you keep the public informed?

Response: The public were kept informed through ongoing consultation events, through social media and through the dedicated web pages on the EEMP's website. The questionnaire which would be available by the end of the week would offer the opportunity to be updated with progress on the consultation. Final proposals would be available on the EEMP website and any recommendations to the Executive Committee would form part of the agenda papers which were published on the Committee's dedicated web pages of East Devon District Councils' website.

If final proposals were approved by the Executive Committee then other projects include the provision of new interpretation boards in priority areas on the Exe and new signage at all slipways.

Other work would include:

- Featuring the zones and codes of conduct in reprints of the "Exe" leaflets distributed by the EEMP.
- Distributing copies of codes of conduct and zonation leaflets to clubs and associations.

In addition, it is the remit of the Habitat Mitigation Officers to engage with and help to educate members of the public as to how they can best enjoy their chosen activity and help care for the special places at the same time.

In response to a question regarding public safety, the Habitat Regulations Delivery Manager advised that the voluntary exclusion zones would not apply if someone was to get into danger and that public safety concerns would be considered as part of the consultation process.

The Chairman invited the two members of the public who had registered to speak at the meeting to address the Committee.

Michael Arstall raised concern about the introduction of enforcement measures against waters users on the Exe and the impact the voluntary exclusion zones would have on people being able to enjoy activities on the water. He referred to the high performing athletes that took part in water sports on the Exe and considered that the Council should be encouraging these activities for health benefits rather than discouraging and preventing them.

In response to the speaker, the Habitat Regulation Delivery Manager advised that no enforcement action was currently being taken. Amanda Newsome, Natural England, added that many of the users of the Estuary were very responsible, however the measures being put in place, such as the Wardens, were there to educate people and mitigate against an increasing population. The measures were not designed to stop people using the Exe, but were designed to protect the habitats concerned.

Nick Webber raised concern about the safety of water users if the exclusion zones were introduced. He advised that the clubs using the waters were responsible users and understood the competing pressures regarding the protected areas, however hoped their comments would be taken on board.

The Chairman thanked the speakers and members of the public for attending the meeting. The Executive Committee Members encouraged users to submit comments to the consultation so that their concerns could be taken on board.

***23 Declarations of interest**

There were none.

***24 Matter of urgency**

There were none.

***25 Exclusion of the public**

RESOLVED:

that the classification given to the documents submitted to the Executive Committee be confirmed; there were two items which officers recommended should be dealt with in Part B.

***26 Rebasing the South East Devon European Site Mitigation Strategy**

The Executive Committee considered the Habitat Regulations Delivery Manager's report updating Members on the work undertaken to rebase the South East Devon European Site Mitigation Strategy and detailing the initial findings from this work and the significant variants that had been revealed. Members noted that further work was required to refine the analysis undertaken to date and that a report would be presented at the next Executive Committee providing greater detail and proposing a strategic way forward.

RESOLVED:

1. that the work that has been undertaken to rebase the South-East Devon European Site Mitigation Strategy be noted and that the significant deviations from the original assumptions that have been revealed be acknowledged.
2. that a further paper setting out the final assessment and proposed strategic way forward be presented at the next Executive Committee meeting.

***27 Financial report**

The Executive Committee considered the Habitat Regulations Delivery Manager's report updating Members on the overall financial position of developer contributions received by all three local authorities as mitigation payments toward measures identified in the South East Devon European Site Mitigation Strategy. The report set out details of the contributions received from inception until the end of the second and third quarters of the 2016 financial year and also included anticipated income from contributions where planning permission had been granted, however the mitigation payment had not yet been paid.

Cllr Rachel Sutton expressed concern about the pressure being placed on resources at the three Councils to produce quarterly financial reports and queried whether it would be sufficient to produce six monthly reports be produced in future. Officers raised no concern with this approach.

RESOLVED:

1. that the quarterly update on the overall financial position including contributions received, contributions not received because arrangements may be in place for contributions to be with-held, expenditure and anticipated contributions (from signed S106) be noted.
2. that the Executive Committee receive six monthly updates on the overall financial position in future, instead of quarterly updates.
3. that an update on 5 year income forecasts of developer contribution receipts be presented at the HREC meeting in June 2017. This will clearly identify where these have been retained by the collecting authority where any agreement is in place for contributions to be with-held.

***28 2016 Annual Business Plan – progress report**

The Habitat Regulations Delivery Manager presented the report setting out the mitigation measures put forward in the 2016 Annual Business Plan and outlining progress made towards delivery of the measures outlined in the committee report during the period 12 August 2016 to 17 February 2017.

In response to a question regarding the patrol boat, the Habitat Regulations Delivery Manager advised that finding a boat that met the required specification and was within the budget had proved challenging, however he was satisfied that a solution had now been found.

RESOLVED:

1. that the progress made towards delivering the 2016 Annual Business Plan be noted.
2. that the expenditure of £1500 from Patrol Boat revenue budget towards purchase of small inflatable boat and outboard motor be approved.
3. that an Annual Review on the implementation of the 2016 Annual Business Plan be presented at the Executive Committee meeting (June 2017).
4. that recommendations for the 2017 Annual Business Plan be presented at the next Executive Committee meeting (June 2017).

***29 Dawlish SANGS Marketing Strategy**

The Executive Committee considered the Habitat Regulations Delivery Manager's report outlining the proposed Marketing Strategy for the Dawlish Countryside Park and marketing budget which Members were asked to agree. Members were advised that in order to be effective, all SANGS needed to be actively promoted to ensure key users were aware of the location and layout of the site and that there was a risk that if key users groups were not targeted the effective use of the site as mitigation would be compromised.

The Executive Committee members spoke of the importance of promoting the site successfully so that people understood its benefits. The Habitat Regulations Delivery Manager advised that the marketing strategy would be reviewed in the second year to ensure its continued effectiveness.

RESOLVED:

1. that the Dawlish Countryside Park Marketing Strategy be approved.
2. that the Dawlish Countryside Park Marketing Budget (Appendix A to the committee report) of £38,958 for the first 3 years be approved.

***30 Exclusion of the public**

RESOLVED: that under Section 100(A) (4) of the Local Government Act 1972 the public (including the press) be excluded from the meeting as exempt information, of the description set out on the agenda, is likely to be disclosed and on balance the public interest is in discussing this item in private session (Part B).

***31 Suitable Alternative Natural Green Space (SANGS) Strengths, Weaknesses, Opportunities and Threats (SWOT) – Analysis of options**

The Executive Committee considered the Habitat Regulations Delivery Manager setting out strengths, weaknesses, opportunities and threats (SWOT) analysis of the potential strategic SANGS sites currently under investigation across the three partner authorities and making recommendations on preferred options for delivery based on the analysis.

Natural England confirmed that the SANGS options as proposed would be delivering the Mitigation Strategy.

RESOLVED:

1. that the South West Exeter SANGS site be agreed as the preferred option for the delivery of SANGS in Strategy Zone B (as shown in Appendix A of the confidential committee report)
2. that an appraisal of future SANGS capacity and likely delivery costs of works be undertaken (including in Exeter's Valley Parks), where practicable in association with potential SANGS providers. This appraisal to inform the development of the Greater Exeter Strategic Plan (GESP) and any future iteration of the South East Devon European Site Mitigation Strategy (SEDESMS), with appraisal costs being borne from partnership GESP funds.
3. that officers commence consideration of options for offering SANGS mitigation capacity to developers who are unable to provide on site SANGS, with further reports to be addressed through the GESP process.

***32 Suitable Alternative Natural Green Space (SANGS) – Proposal in SANGS Zone B**

The Principal Growth Point Officer presented a report setting out the proposed acquisition, instatement and management arrangements for the preferred site in SANGS Zone B. The site would play a key role in mitigating the impacts of development within the Partnership's three local authority areas. Members noted that the report outlined expectations of Teignbridge District Council, however formal approval from Teignbridge District Council was required.

RESOLVED:

1. that Teignbridge District Council undertake the following actions for the purposes of providing SANGS:
 - a) Acquisition of the land within the approximate area identified at Appendix A (on page 85) of the confidential committee report.
 - b) Procurement of a contract or direct works to the land in order for the SANGS to be provided in broad accordance with the site masterplan at Appendix B (on page 86) in the confidential committee report.
 - c) Procurement of a contract or direct works that ensure ongoing management and maintenance (but not ownership transfer) of the SANGS.
2. that the proportionate (to be agreed, subject to ongoing work to rebase the mitigation strategy) payment, as outlined in the confidential committee report, be paid to Teignbridge District Council as a contribution towards the SANGS, as soon as funds for SANGS become available, and upon confirmation of the final land transaction costs.
3. that Teignbridge District Council be requested to provide detailed reports on purchase, delivery and management/ maintenance arrangements regarding the South West Exeter SANGS.

Attendance list

Committee Members:

Cllr Andrew Moulding, East Devon District Council (Chairman)
Cllr Humphrey Clemens, Teignbridge District Council
Cllr Rachel Sutton, Exeter City Council

Amanda Newsome, Natural England

Officers

Henry Gordon Lennox, Strategic Lead – Governance and Licensing (EDDC)
Simon Davey, Strategic Lead – Finance (EDDC)
Ed Freeman, Service Lead – Strategic Planning and Development Management (EDDC)
Neil Harris, Habitat Regulations Delivery Manager – Growth Point Team
Naomi Hartnett, Principal Projects Manager – Growth Point Team
Peter Hearn, Strategic Infrastructure Planning (ECC)
Anne Mountjoy, Growth Point Communications Officer – Growth Point Team
Fergus Pate, Principal Growth Point Officer (TDC)
Hannah Whitfield, Democratic Services Officer (EDDC)
Andy Wood, Projects Director – Growth Point Team

Apologies:

Peter Lacey, Green Infrastructure Board

Chairman Date.....