

**Ward** Budleigh And Raleigh

**Reference** 20/2089/MFUL

**Applicant** Megan Rimmer (Environment Agency)

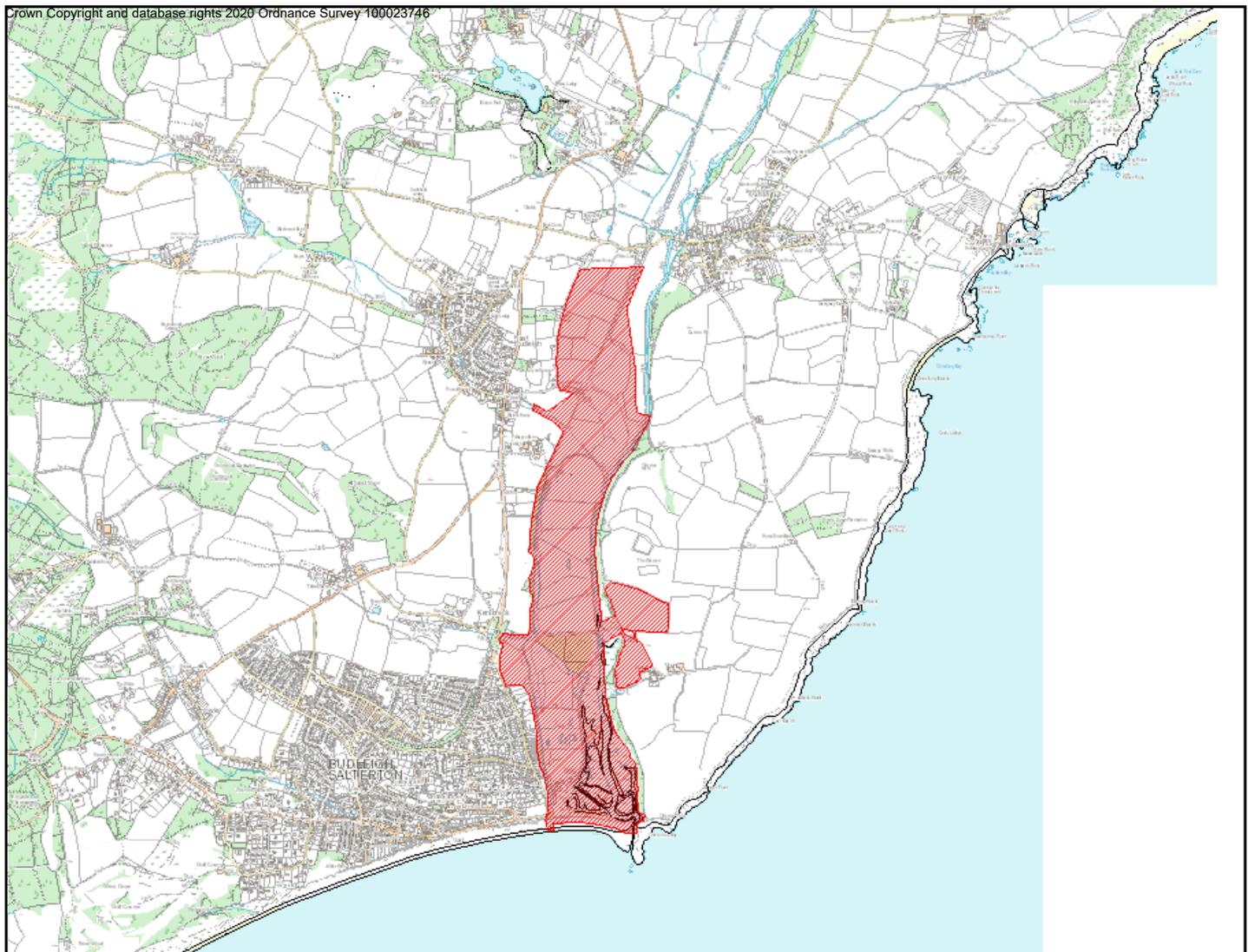
**Location** 151 Hectares Of Land Within The Parishes Of East Budleigh, Budleigh Salterton And Otterton From Lime Kiln Car Park (SY072819) To South Of Frogmore House (SY074850) (The Lower Otter Valley)

**Proposal** Proposed breach of the River Otter embankment, Little Bank and Big Bank to restore the historic floodplain creating intertidal saltmarsh, mudflats and freshwater habitat at Big Marsh, and new freshwater habitat at Little Marsh. Associated works including development of a new footbridge, realignment of South Farm Road, and creation of a new car park. (The Lower Otter Restoration Project). Accompanied by an Environmental Statement.



**RECOMMENDATION:**

- 1. Approve the Appropriate Assessment attached as Appendix 1**
- 2. Approve the application with conditions as detailed.**



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|   |  | <b>Committee Date: 6<sup>th</sup> January 2021</b> |
| <b>Budleigh And Raleigh (East Budleigh)</b> | <b>20/2089/MFUL</b>  | <b>Target Date: 28.12.2020</b>                     |
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**RECOMMENDATION:**

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**EXECUTIVE SUMMARY**

**This application is before members as the officer recommendation is contrary to the views of the parish councils.**

**This is an application for the restoration of the historic floodplain of the lower Otter river and creation of intertidal saltmarsh, mudflats and freshwater habitat, together with the realignment of South Farm Road, creation of a new car park and new footbridge. The application is accompanied by an environmental statement which assesses impact on habitat, ecology, flood risk, archaeology, landscape and conservation.**

**The application has been widely consulted on and statutory bodies are generally supportive of the proposal.**

**Although the purpose of the scheme is to allow the river at this point to be inundated with water, both from the river and the sea, the flood risk assessment and flood modelling results indicate that in fluvial events there will be a reduction in flood depth throughout the study area for all modelled flood events.**

**A thorough review of the FRA by the Environment Agency (independent of the project team) found that flood risk will not be detrimental for third parties. Concerns have been raised regarding the positioning and size of the proposed car park; the highway authority would like this to include more car parking spaces and connect by footpath along South Farm Road. Concerns were also raised regarding the consultation process, both in terms of prior consultation undertaken by the applicant and the timing of site notices.**

**The impacts on trees, local landscape, the setting of heritage assets, use of the estuary and contamination have all been addressed.**

**It is considered that the proposal is acceptable subject to appropriately worded conditions relating to archaeology, materials of the footbridge, access details and public rights of way, contamination, a construction management plan, groundwater levels, adequate car parking, the provision of a footpath, arboricultural and tree protection details.**

## **CONSULTATIONS**

### **Local Consultations**

#### **Budleigh Salterton Town Council**

Councillors voted on the following nine proposals and all the proposals were approved:

1. The field at the northern end of Granary Lane is to be used for the storage of construction materials and equipment - that land is in the parish of Budleigh Salterton but it is outside the Built-Up Area Boundary.  
Agreed: On completion of the project, the land should be returned to agricultural use and EDDC should be asked for assurance that this will happen.
2. There are very understandable concerns about the increase in traffic flow and density on Granary Lane and action must be taken to mitigate this.  
Agreed: DCC Highways Officers will be asked to meet with members of the Budleigh Salterton Traffic Group and Granary Lane residents to discuss the implementation of temporary measures for the duration of the project. Officers will also be asked to carry out a Traffic Impact Analysis which should cover the whole of the area to the east of East Budleigh Road and not just Granary Lane.
3. The project states that the footpath, which runs from Lime Kiln Car Park to South Farm Road along the western side of the valley, will be raised above high-water level to protect the cliff face at the bottom of the gardens of Granary Lane from erosion. This will also stop salinity levels rising and impacting on the trees and other vegetation. However, this action will not be completed as part of LORP but as part of the FAB project immediately following completion of LORP.  
Agreed: Reassurance is needed from EDDC that this proposal will be an integral part of the FAB Project.
4. If the FAB project does not go ahead:

Agreed: Reassurance from EDDC that the LORP will honour the commitment to raise the footpath.

5. Agreed: Reassurance that residents will receive appropriate compensation for any subsequent damage to the cliff face affecting residents' gardens and that LORP/FAB have liability cover for such an eventuality.
6. One of the immediate effects of the Project will be a rise in water levels which will impact on this vulnerable area. It is imperative that a temporary barrier is put in place along this footpath to protect the cliff area until a permanent raised path is constructed.

Agreed: Reassurance from EDDC/EA that such a barrier will be erected. Regarding the proposed car park in South Farm Road.

7. Agreed: Request that EDDC install a height restriction at the entrance to prevent its use by campervans and travellers.
8. In the early stages of the project, there was an extensive consultation process. It has taken approximately two years to produce these current proposals. The time given for local authorities, residents and other interested parties to absorb the information and respond with any comments and concerns, is inadequate, especially while current restrictions preclude a public meeting from taking place.

Agreed: In addition to the motion that the application be withdrawn to allow for a full consultation to be undertaken, the applicant should be asked to provide hard copies of the proposals to enable those without internet access to view the proposals.

9. 2020 has seen an increase in water sports activities both in the sea and on the river, especially at high tide. Signs erected by the Pebblebed Heaths Conservation Trust stating there should be no water sports on the river have been widely ignored. This is also in contravention of Community Action CLW3 of the Budleigh Salterton Neighbourhood Plan. The flooding of the lower reaches of the river, especially at high tide, will only serve to encourage water sports activities, with subsequent negative impact on the area's wildlife and the environment in general.

Agreed: Reassurance that action will be taken by EDDC/EA/Pebblebed Heaths to ensure that all water sports activities are prohibited throughout the entire area of the project. This Council also asks that additional checks be carried out on the integrity of the upper footpath running from the Lime Kiln Car Park to Donkeys Turn.

### Budleigh Salterton Town Council – 26/10/20

Application No: 20/2089/MFUL - The Lower Otter Restoration Project

At a meeting of the Town Council held via Zoom on Monday 26 October, Members discussed the above application to create an intertidal salt marsh in the parishes of Otterton, East Budleigh and Budleigh Salterton.

Whilst the plan itself was commended, there was a great deal of concern that many residents, from all three parishes, have been unable to view the plans because they do not have access to the internet; some were not even aware of the application which will affect many residents. Many of those residents who have read the plan feel that they have been given inadequate time to assess its implications and would

like to have the opportunity to discuss the project in detail with the relevant authorities.

Budleigh Salterton Town Council asks that the application be withdrawn until such time as a fully accessible public consultation has been undertaken. Members understand that a public consultation was to be carried out earlier this year and the Covid-19 crisis put paid to that, but technology is so advanced at present that there are many alternatives to the usual "in person" meetings.

I have written to the Environment Agency and Clinton Devon Estates asking that the application be withdrawn and a full a public consultation be carried out. I do however attach a copy of this Council's comments relating to the application itself in case the applicants are not willing to withdraw the application.

#### Parish/Town Council

LORP Recommendations by East Budleigh with Bicton Parish Council  
Council Meeting held on 27th October 2020:

#### Traffic / Parking

There are real concerns about vehicle parking and potential traffic chaos along narrow roads if and when large numbers of visitors descend:

- The proposed car park and ancillary parking capacity is unlikely to be sufficient. South Farm Rd could become chaotic in the search for parking and this will be exacerbated by those seeking to avoid payment at the proposed new car park if it is Pay and Display. The consequences are likely to lead to congestion and nuisance parking on narrow roads further afield: Granary Lane / Lime Kiln, Frogmore Lane / Otterton.
- There is concern that the narrow Kersbrook Lane will be used by heavy construction traffic taking a short cut (Satnav), thereby leading to chaos and blockage.
- We share the view that a future traffic impact assessment should be made for this project.

#### Flooding:

- There are concerns relating to the creation of new flood risks, particularly following heavy rain and / or very high incoming tides:
- The stream at Kersbrook could be backed up by high incoming tides causing flooding to residential properties in Kersbrook. Surveys and preventative measures should be considered. There is also concern that the aquifer in Kersbrook could become salinated.
- Frogmore Lane is already vulnerable to 'lakes' forming during heavy rain and combined with high tides this could cause residential properties to be flooded. Surveys and preventative measures should be considered.
- Granary Lane could be subject to renewed flooding despite the preventative measures previously taken.
- The route out of South Farm Cottages appears destined to be flooded at times.

#### Recreation:

- There is no mention of seating around the footpaths. Seating is highly desirable for the less mobile or for those simply wishing to take in the views. (N.B. planning site would not upload docx or pdf file)

Despite agreeing with the objectives of the LORP, Otterton Parish Council have voted not to support the scheme due to the impact we believe increased visitor numbers will have on the village of Otterton from a highways perspective.

The applicant has stated in their application that they do not expect an increase in visitor numbers to be experienced in the area, which includes Otterton village, as a result of their development and therefore have not considered the highways impact of the development in the wider area. We disagree with this assessment. Evidence from similar developments in the area demonstrate to the contrary.

Seaton Wetlands, a similar, albeit larger scale development to the east of the Otter valley has been proven to attract over 70,000 visitors a year. These 2019 figures are expected to have been exceeded in 2020 due to the impact of COVID19, and are predicted to continue to increase whilst the pandemic continues, due to the nature of the attraction.

Whilst we recognise that the Seaton Wetlands development is larger than the LORP, when you consider that the LORP is located in an already very popular tourist area, we believe the evidence from Seaton Wetlands suggests that a significant increase in visitor numbers to the area is likely as a result of the LORP.

We therefore believe that it is the responsibility of the applicant to both undertake an evidence based assessment of the potential impact of visitor numbers on the whole of the lower Otter area and consider the impact of the development on both numbers of visitors and visitor's patterns of behaviour. We also believe the LORP should consider appropriate mitigation measures for any expected impacts on the local area from a highways perspective. Ref TC7 Local Plan.

We believe that the impact of the LORP will be an increase in visitor numbers taking advantage of free parking in the village of Otterton and enjoying the walk from Otterton Mill to the LORP area and back. We also believe that the resulting increase in traffic volumes and numbers of cars parking in the village will take the village from the position of being concerned about both traffic and parking, to having a demonstrable problem which would need to be addressed. The Parish Council have suggested that the provision of a free car park near to the river in Otterton would address these issues. An alternative suggestion of the provision of a free car park within the village may address one, but not both of these issues.

Otterton Neighbourhood Plan states at paragraph 4.4.6 (page 39) "If this project goes ahead, it is likely to attract many more visitors to the area because of the anticipated increase in wildlife habitats. Some of these visitors are likely to also visit Otterton. Increased visitor numbers may have further implications for planning for a car park to help alleviate the parking problems in the village." Policy ONP8 concerns traffic and travel around the parish and requires the applicant to provide a traffic management and travel plan for development that generates a significant increase in traffic movements . We believe that the lack of a visitor numbers assessment in the application is an attempt to avoid the consideration of these issues and as such they have not been adequately addressed by the applicant, so it is on this basis that we recommend that EDDC refuse to give planning consent for the LORP application as it stands.

## **Technical Consultations**

### **The Devon Countryside Access Forum**

The Devon Countryside Access Forum (DCAF) is a local access forum under the Countryside and Rights of Way Act 2000 (CRoW Act). Its statutory remit is to give independent advice "as to the improvement of public access to land in the area for the purposes of open-air recreation and the enjoyment of the area..." Section 94(4) of the Act specifies bodies to whom the Forum has a statutory function to give advice and this includes East Devon District Council and the Environment Agency.

The DCAF currently has fifteen members, appointed by Devon County Council, who represent the interests of landowners/managers, access users and other relevant areas of expertise such as conservation and tourism.

This response will be on the agenda for formal approval at the next Devon Countryside Access Forum meeting on 21 January 2021. The Forum's position statements, and previous advice, support the following observations.

The Devon Countryside Access Forum notes and welcomes the fact that many of its comments made in 2014 have been taken on board in the proposals for this project. The Forum recognises that without action some of the important and very popular recreational routes could be lost in future due to rising sea levels.

The Forum is not commenting on the environmental, habitat and landscape changes which are likely to be significant and will provide a different experience. It is nonetheless important that people's overall enjoyment of this area from the recreational access perspective is not diminished.

#### Scheme access improvements:

The Devon Countryside Access Forum has some suggestions which could improve the recreational access benefit of the project and these are outlined below. The numbers refer to the scheme overview graphic:

##### 1. Shingle bar (number 10)

This circular walk is relatively level and enjoyed by people who cannot walk far as it gives both sea and estuary views. The Forum notes the intention to remove the path on the rear of the shingle spit and to shorten the path on the crest. It would be appreciated if a way could be found to provide a short circular walk at this point.

##### 2. New South West Coast Path footpath bridge

The Devon Countryside Access Forum welcomes the accessibility of this bridge and the proposed gradients to join it. However, the graphic 3.6 - Pedestrian footbridge parapet detail - looks too enclosed for children or people using wheelchairs or mobility scooters to enjoy the views. The Forum requests that consideration is given to 'vision ports', gaps in the cladding, or use of see-through materials to overcome this.

### 3. Viewing areas

The erection of viewing areas at several locations is supported. However, it is unclear whether these will include seating areas. This would be helpful for people wishing to sit and enjoy the views

### 4. Gates

The changes proposed provide an opportunity to ensure that all gates are accessible. The Devon Countryside Access Forum advises that widths should be 1.5m and gates should open easily on the correct alignment.

Correct hinges should be used plus, preferably, trombone handles to facilitate easy opening. Gradients approaching the gates should permit easy access and surfaces compacted enough to allow use of pushchairs or wheeled mobility vehicles. The Devon Countryside Access Forum's position statement on disability is attached (Appendix 1) and, as cited in the statement, the Disabled Ramblers' website has comprehensive information on standards.

Disabled Ramblers - Least Restrictive Access

Reference is made to a 'pedestrian gate' north of South Farm Road at the start of Otterton FP 1. It is important that this meets accessibility standards, taking into account land manager's concerns about livestock.

### 5. South Farm Road chicanes

The Devon Countryside Access Forum advises that the chicanes should be of appropriate design to allow mobility vehicles through.

### 6. Budleigh Salterton FP 12 (FAB Link route) (number 27)

The Devon Countryside Access Forum notes the proposals to increase the height of this route and make it 'an all-ability' surface. It would be helpful to define 'all-ability'. The addition of boardwalks or raising the ground levels may be required to ensure this route is available more frequently and not just in "the majority of tidal conditions".

The Devon Countryside Access Forum notes that the National Cycle Network route crosses South Farm Road before using the road network to approach Budleigh Salterton. As part of this significant project, it would seem an ideal opportunity to assess whether cyclists could be provided with an off-road route through this new landscape. The Forum recommends that Budleigh Salterton FP 12 could be a cycle/shared use route linking South Farm Road at the western end to Lime Kiln car park, with a safe exit onto Salting Hill/Granary Lane, subject to consideration of design and width and involvement of project partners and Fab Link. The Cycle Tracks Act 1984 could be a mechanism to achieve this. Cyclists could be directed this way on an improved path, rather than the current situation where cyclists attempt to use Budleigh Salterton FP 2 as an illegal cut-through.

### 7. Otterton to White Bridge

Although it falls just outside the planning application area, the Devon Countryside Access Forum aspires to create an accessible route along Otterton FP 1 to exit at Otterton.

Matters in the planning application requiring further consideration:

The Forum has some concerns which it feels need to be addressed or expanded on.

a) Planning application processes

To minimise disruption to the public rights of way network and the South West Coast Path, the Devon Countryside Access Forum advises that it is imperative for the Lower Otter Valley Restoration Project and the Fab Link Project to work closely together and, in particular, to ensure the continuity and resilience of Budleigh Salterton FP 12. The Forum has made suggestions to improve this route in point 6, above. All works relevant to this area of land should have been presented for consideration at the same time, so that consultees and members of the public could assess the overall impact and have confidence that proposals in the application could be achieved.

b) Car park (number 9)

The footpaths along this valley are particularly well-used and some of the most popular in the County. The Devon Countryside Access Forum welcomes the new car park but is not convinced that it will provide the number of spaces required, particularly if new visitors are attracted by the new landscape and parking is no longer permitted on South Farm Road. At certain times of year provision of car parking may be insufficient and the Forum suggests that additional car parking could be made available on a section of the old landfill site.

c) Breach of the Big Bank and Little Bank (numbers 3 and 4)

The resilience of the footpath network across the banks is unclear. The Devon Countryside Access Forum advises that the proposals to lower the footpaths at these points could lead to significant amounts of fluvial and high tide deposits. The accumulation of mud and other debris at regular intervals will add significantly to maintenance costs as well as meaning that the routes could be impassable, particularly for pushchairs and mobility scooters/wheelchairs. The current tidal footpath near Topsham is unusable for much of the time.

The use of higher-level boardwalks, allowing water underneath, could be one option to explore although the Forum recognises these would also have to be maintained. These have been used on the Exe Estuary trail. Long term maintenance funding should be explored and incorporated as part of the project cost.

d) East Budleigh FP 3, western edge of Northern Big Marsh (number 20)

The Devon Countryside Access Forum has concerns about the provision of refuges in times of high tide. Some members of the public may not read emergency warning notices or be aware of how quickly tide levels can change or the speed of water. Many people are unaware of tide times. It is not clear whether the refuges would be required every high tide or only in exceptionally high tides. Equally, it is unclear whether the raised path levels will accommodate the highest projected levels of freshwater and tidal water.

Securing safe higher ground access routes over private land will need to take into account land management requirements and be extremely well-signed.

Gates would need to be suitable for all users.

e) Temporary diversions

As previously stated, these are very popular paths, with 250,000 people annually using the South West Coast Path (SWCP) at this point. The Devon Countryside Access Forum advises that temporary diversions during construction work need to be well-signed and promoted and kept to the minimum possible time.

The Design and Access Statement states that the diversion of the SWCP route during construction of the new pedestrian bridge will be along Budleigh Salterton FP 12 and FP 3. It is not entirely clear how the timing of the restoration project and the FAB Link project work on these footpaths will occur to facilitate this.

The Devon Countryside Access Forum would welcome feedback on its comments.

APPENDIX 1: Devon Countryside Access Forum - Physical Disability Access Position Statement. See: <https://democracy.devon.gov.uk/documents/s11264/Draft%20disability%20access%20position%20statement.pdf>:

Campaign To Protect Rural England

Devon CPRE has only recently been asked to look at this project and so has only had a short time to examine the proposal and to comment on the impacts. Our comments on the proposal are given below.

The whole reason for the project appears to be based on two premises:

1. The effects of a rapidly changing climate.
2. An EU regulation to compensate for habitat loss in the Exe estuary due to flood work needed as the result of climate change.

There is no evidence to show that climate change is having any effect on the estuary in terms of sea level rise, extreme rainfall, more frequent storms or flooding. The very slow sea level rise has been going on for thousands of years and the rate of rise has not changed as a result of climate change. The evidence, from the Met Office and the Intergovernmental Panel on Climate Change (IPCC), is given in Appendix A. Similarly, we have seen no evidence to show that there is a need to improve flood defences in the Exe estuary and thus to show that there is a need for compensatory habitat in the Otter Estuary. As sea level rises, river deltas also rise as silt is deposited where the river meets the sea and thus there should be no loss of intertidal habitat.

Under the proposed project, of particular concern to us is the impact on the landscape. The creation of 28ha of mudflats (highly visible at low tide) and 27ha of saltmarsh to provide 14.5 ha of compensatory habitat is unnecessary.

We have not found any cost/benefit analysis to demonstrate that there is a net benefit from the project.

We have also not found a risk assessment of the project. There is a list of the "risks if we take no action" and a list of the "opportunities if we act now", but there appears to be no list of "the risks if we take action". It is very worrying to find statements like "The Scheme will introduce far greater volumes of tidal water through the existing estuary and mouth area, similar to historic tidal flows that occurred prior to significant man-made intervention. It is expected that these higher tidal flows will see erosional change through natural processes at the estuary mouth, shingle Spit and inner estuary areas. Existing channels are likely to deepen and widen over an initial, rapid, short-term period, followed by a gradual evolution to a new equilibrium state. These changes are considered a positive restoration of the estuary in the long-term." Is there any analysis to back up what appear to be expectations and opinions? What could happen if these assumption are wrong? A full risk assessment should be carried out before a decision is made on this proposal.

(Appendix A is viewable on the website under 'Documents')

DCC Historic Environment Officer  
EDDC Ref: 20/2089/MFUL

Proposed breach of the River Otter embankment, etc. - The Lower Otter Restoration Project: Historic Environment

DCC HET Ref: ARCH/DM/ED 35919

I refer to your consultation on the above planning application.

The proposal encompasses a landscape that is of historical/archaeological value in itself, contains many known archaeological sites of prehistoric to post-medieval date and potential for further discoveries as well as palaeoenvironmental evidence. The Lower Otter scheme proposes various intrusive management actions, groundworks and new structures which will expose and destroy archaeological and artefactual deposits associated with a range of heritage assets. The submitted EIA and supporting documents seek to assess the archaeological impact of the scheme and propose mitigation for acceptable loss of assets. While I disagree with some of the conclusions of the EIA, regarding the significance of some of the known or potential archaeology and the nature and extent of appropriate mitigation, I think that the impact of the development upon the historic environment can be mitigated by a staged programme of work. This should investigate, record and analyse the archaeological, geoarchaeological and palaeoenvironmental evidence that will otherwise be destroyed by the proposed development, and should go beyond the proposals contained in the EIA and the submitted Written Scheme of Investigation for Geoarchaeological work.

I therefore recommend that this application should be supported by the submission of a Written Scheme of Investigation (WSI), or series of WSIs setting out a staged programme of archaeological, geoarchaeological and palaeoenvironmental work to be undertaken in mitigation for the loss of heritage assets with archaeological interest. The WSI(s) should be based on national standards and guidance and be approved by the Historic Environment Team.

If a Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with paragraph 199 of the National Planning Policy Framework (2019) and Policy EN6 (Nationally and Locally Important Archaeological Sites) of the East Devon Local Plan, that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby:

'No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason 'To ensure, in accordance with Policy EN6 (Nationally and Locally Important Archaeological Sites) of the East Devon Local Plan and paragraph 199 of the National Planning Policy Framework (2019), that an appropriate record is made of archaeological evidence that may be affected by the development'

This pre-commencement condition is required to ensure that the archaeological, geoarchaeological and palaeoenvironmental works are agreed and implemented prior to any disturbance of archaeological deposits by the commencement of preparatory and/or construction works.

I would envisage a suitable programme of work as taking the form of a staged programme of archaeological works, tailored to the range of proposed interventions and groundworks across the scheme. This will include a geoarchaeological evaluation (as per the submitted WSI) to inform further programmes of investigation; field walking and metal detector surveys to identify surface artefacts; targeted evaluation trenching to determine the presence and significance of any heritage assets with archaeological interest that will be affected by the development. Based on the results of this initial stage of works the requirement and scope of any further archaeological mitigation can be determined and implemented either in advance of or during construction works. This archaeological mitigation work may take the form of full area excavation in advance of groundworks or the monitoring and recording of groundworks associated with the construction of the proposed development to allow for the identification, investigation and recording of any exposed archaeological or artefactual deposits. The results of the fieldwork and any post-excavation analysis undertaken would need to be presented in an appropriately detailed and illustrated report, and the finds and archive deposited in accordance with relevant national and local guidelines.

There is also a significant opportunity for a development of this nature to actively promote understanding and enjoyment of and access to the historic environment in association with the natural environment. The written scheme of investigation should therefore set out how the results of the programme of archaeological,

geoarchaeological and palaeoenvironmental work will be presented to the public, on site and through other forms of dissemination.

I will be happy to discuss this further with you, the applicant or their agent. The Historic Environment Team can also provide the applicant with advice of the scope of the works required, as well as contact details for archaeological contractors who would be able to undertake this work. Provision of detailed advice to non-householder developers may incur a charge. For further information on the historic environment and planning, and our charging schedule please refer the applicant to: <https://new.devon.gov.uk/historicenvironment/development-management/> .

### DCC Footpath Officer

The Public Rights of Way Team has a duty to assert and protect the rights of the public to the full and free enjoyment of public rights of way and to maintain the network. In addition it is also responsible for the maintenance of recreational trails and unsurfaced roads.

Government guidance considers that the effect of development on a public right of way is a material planning condition (Rights of Way Circular 1/09 - Defra October 2009, paragraph 7.2) and that public rights of way and access should be protected and enhanced with opportunities sought to provide better facilities for users by adding links to existing networks (National Planning Policy framework paragraph 98).

Devon County Council's Rights of Way Improvement Plan policy states that, working closely with LPAs, opportunities will be sought for improvements to the rights of way network through planning obligations where new developments are occurring.

It is also the County Council's policy that a holding objection will be made against any planning application which fails to take account of an existing public right of way until the matter is resolved.

### Assessment of application

The proposal as submitted would have a direct effect on public rights of way as identified in the planning documents. Specifically, a number of public footpaths will require diversion to enable the development to be carried out as proposed if planning permission is granted. The footpaths affected are identified in Appendix A Figure 1.11 and the proposed alternative routes, where applicable, on Figure 1.18. The applicant will need to submit separate application(s) to East Devon District Council and/or the Department for Transport for order(s) under sections 257 and/or 247 respectively of the Town and Country Planning Act 1990 to effect the realignment of these footpaths. This process is separate to but can be carried out in parallel to the planning process.

In addition, any other changes to the existing public rights of way, such as changes to surface, levels and structures, will require liaison with and the written consent of the DCC PROW Team as the highway authority.

The Public Rights of Way Team therefore has no objection to the proposal subject to conditions covering:

#### Submission of details

Prior to the commencement of development, an access scheme shall be submitted to and approved in writing by the planning authority, in liaison with the Devon County Council Public Rights of Way Team. Such scheme shall include provision for the design of public rights of way routes including surfacing, widths, levels, gradients, landscaping, structures and any road crossing points.

Reason: In the interests of the amenity and safety of the public.

#### Diversion of public rights of way

If it will be necessary to permanently divert or stop-up a public right of way to enable development to take place in accordance with planning permission:

No development affecting the public right of way shall commence until such time as a diversion order under section 257 and/or 247 of the Town & Country Planning Act 1990 (as amended) has been made and confirmed.

Reason: In the interests of the amenity and safety of the public.

#### Information

Please note that the grant of planning permission does not grant the right to close, alter or build over a right of way in any way, even temporarily, this includes, for example, a change in the surface, width or location. Nothing should be done to divert or stop up a public right of way without following the due legal process, including confirmation of any permanent diversion or stopping-up order and the provision of any new path. In order to avoid delays this should be considered at an early opportunity.

If a temporary closure is required during construction works, e.g. for safety reasons, the applicant would need to apply to the County Council for a Temporary Traffic Regulation Order.

Further information about public rights of way and planning is available on our website [here](#).

If permission is granted, please include as footnotes in the decision notice:

The alignment, width, and condition of public rights of way providing for their safe and convenient use shall remain unaffected by the development unless otherwise agreed in writing by the Public Rights of Way Team.

Nothing in this decision notice shall be taken as granting consent for alterations to public rights of way without the due legal process being followed.

Please do not hesitate to contact me if you would like further clarification. Many thanks.

### Conservation

This proposal has been assessed on the basis of the impact (negative or positive) on the setting of designated and non-designated heritage assets. In general it seems that there are no direct works to any heritage assets or curtilage listed assets, however, the setting of which is the primary focus of the works. There has been fair consideration of the impact as noted in section 12 "Historic Environment" of the Environmental Statement. The area of research outside of the proposed site could have been expanded a little, however, there is some reference to the Conservation Areas and historic settlements containing many listed buildings.

The main concerns with regards to impact are the areas that entail built structures, this includes the viewing areas, culverts, raised footpaths and bridges. The culverts to the North of grade II Pullhayes Farm, is to be concrete. This would introduce a modern, permanent structure into the natural landscape that is unsympathetic and therefore would have, to a small degree, a negative impact to the setting of the listed buildings and any key viewpoints either static or kinetic. It is anticipated that the mitigation, as in other areas, allows for the natural vegetation to eventually cover over the new structures.

The footbridge, although supportive in principle, is of unsympathetic materials i.e. fibre reinforced polymer cladding boards, the cumulative effect over the large area of this bridge is of concern as to the impact on the area and heritage assets in general. In mitigation it is suggested that early samples of the this product and others e.g. burnt wood finished timber, or mixtures of.., are submitted at the earliest convenience to conclude any concerns.

More information on potential areas, extent and details of all signage would be appreciated, as this again could be cause for a potential for unnecessary visual clutter in this natural and historic landscape.

The associated projects and planning applications for the demolition and rebuilding of the cricket facility and FAB-Link project are important to the success of this proposal.

Recommendation - support in principle.

### Contaminated Land Officer

We have considered the following documents in relation to this application:

Lower Otter Restoration Project Ground Investigation Report, CH2M, February 2018  
Lower Otter Restoration Project, Groundwater and Geo-environmental Risk Assessment, Final

We consider that the potential risks to human health from proposed changes to the South Farm Road landfill have been largely characterised in the above reports and appropriate risk mitigation measures are suggested. These measures include additional capping of 600mm, piling to prevent erosion of the waste by the stream channel and removal offsite of some material.

We note from the Groundwater and Geo-environmental Risk Assessment that a potential contaminant linkage from inhalation of landfill derived ground gases to end users exists (table 3-5). However, this risk is not given a classification or further consideration in the report. Furthermore, gas monitoring information has not been provided and the potential resulting risk from modification of the landfill/landscape assessed, either to end users or nearby properties. Is it anticipated that the works will impact gas generation or existing migration pathways?

In order that this risk is appropriately characterised and the suggested mitigation measures to protect human health introduced, we recommend that the following condition (CT3) be applied to any consent:

**CT3 Phased Condition:**

Unless otherwise agreed by the Local Planning Authority, development, other than that required to be carried out as part of an approved scheme of remediation, must not commence until conditions 1 to 4 below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 4 has been complied with in relation to that contamination.

**1. Site Characterisation**

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

(i) a survey of the extent, scale and nature of contamination.

(ii) an assessment of the potential risks to:

Human health,  
Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,  
Adjoining land,  
Groundwaters and surface waters,

Ecological systems,  
Archeological sites and ancient monuments.

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR 11.

## 2. Submission of Remediation Scheme

Where identified as necessary as a result of the findings of the investigation above, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared and submitted for approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

## 3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development (other than any part of the development required to carry out remediation), unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and will be subject to the approval in writing of the Local Planning Authority.

## 4. Reporting of Unexpected Contamination

In the event that contamination is found at any time during the approved development works that was not previously identified, the findings must be reported in writing immediately to the Local Planning Authority. A new investigation and risk assessment must be undertaken in accordance with the requirements of condition 1 above and where remediation is necessary a new remediation scheme must be prepared in accordance with the requirements of condition 2. This must be subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 3.

## 5. Long Term Monitoring and Maintenance

Where identified as necessary, a monitoring and maintenance scheme to include monitoring the longterm effectiveness of the proposed remediation over a period to be agreed with the LPA, and the provision of reports on the same must be prepared,

both of which will be subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority.

This must be conducted in accordance with DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR 11.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land, together with those to controlled waters, property and ecological systems, are minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN16.

### Environmental Health

Proposed breach of the River Otter embankment, Little Bank and Big Bank to restore the historic floodplain creating intertidal saltmarsh, mudflats and freshwater habitat at Big Marsh, and new freshwater habitat at Little Marsh. Associated works including

I have reviewed the application with regards to Environmental Health impacts of the proposal. The reports identify the key impacts relating to noise specifically from the construction phase and whilst there will be some disturbance to the limited numbers of residential property these are within guideline levels. To ensure that these aspects are carefully managed as detailed in the reports the following condition is recommended.

A Construction and Environment Management Plan must be submitted and approved by the Local Planning Authority prior to any works commencing on site, and shall be implemented and remain in place throughout the development. The CEMP shall include at least the following matters : Transport routes and measures to control traffic impacts, Air Quality, Dust, Water Quality, Lighting, Noise and Vibration, Pollution Prevention and Control, and Monitoring Arrangements. Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site. There shall be no high frequency audible reversing alarms used on the site.

Reason: To protect the amenities of existing and future residents in the vicinity of the site from noise, air, water and light pollution.

### Natural England

Thank you for your consultation on the above dated 08 October 2020.

The Lower Otter Restoration Project will enable the area to adapt to coastal change whilst creating intertidal habitats, which will enhance its value for wildlife. Significant increases in the area of saltmarsh and intertidal mud are likely to be created through the project as the estuary is allowed to function more naturally.

Natural England considers that the provision of compensation for the loss of intertidal habitats within the Exe Estuary Special Protection Area (SPA) and Ramsar site is a key element of this project.

**SUMMARY OF NATURAL ENGLAND'S ADVICE  
NO OBJECTION - SUBJECT TO APPROPRIATE MITIGATION AND MONITORING  
BEING SECURED**

As a proposal whose primary objective is to conserve or enhance biodiversity, we consider it may be supported in line with paragraph 175(d) of the National Planning Policy Framework (NPPF).

**DESIGNATED SITES [EUROPEAN]**

**Habitats Regulations Assessment (HRA)**

There is potential for a likely significant effect on the Exe Estuary SPA and Ramsar site, hence a shadow HRA has been prepared by the applicant. Natural England's advice is that this proposal may need to be formally checked and confirmed by your Authority, as the competent authority, via an appropriate assessment.

Our advice is that the determining authority can be certain that the proposal will not have any adverse effects on the integrity of the Exe Estuary SPA/Ramsar site. Amendments and additions to the shadow HRA are required to enable it to be sufficiently rigorous and robust enough to be adopted by the Local Planning Authority (LPA). We provide further advice in Annex 1. In accordance with the Conservation of Habitats & Species Regulations 2017 (as amended), Natural England must be consulted on any appropriate assessment your Authority may decide to make.

**DESIGNATED SITES [NATIONAL]**

**Lower Otter Site of Special Scientific Interest (SSSI)  
Otter Estuary Marine Conservation Zone (MCZ)**

We have no objection to the predicted changes to the SSSI or MCZ on the basis that there will be a major increase in the area of habitats created and maintained by natural processes, subject to the following mitigation measures being secured by condition:

- Environmental Action Plan including Construction Management Plan (CEMP), as set out in section 8.9.1 of the Environmental Statement (ES);
- Prevention of construction impacts on the SSSI in the CEMP;
- Visitor management and monitoring strategy to include interpretation boards;
- Retention and enhancement of footpath screening, by both planting and fencing, to the Lower Otter SSSI and new intertidal habitats to prevent bird disturbance;
- Landscape and Environmental Management Plan.

Further details are given later in this letter.

## **Monitoring for protected sites**

To ensure that the compensation habitat creation is successful and the SSSI and MCZ are protected, the monitoring measures set out in Section 8.11.1 of the ES should be secured by condition.

- The monitoring methodology and timescale should be to NE approval, including:
- The wintering bird survey methodology;
- Geomorphological change of the mouth of the River Otter pre and post scheme;
- Establishment of new intertidal areas;
- SSSI erosion habitat gain and loss.

Permission should not be granted until such time as the implementation of these measures has been secured.

Natural England's further advice on designated sites/landscapes and advice on other natural environment issues is set out below.

### **FURTHER ADVICE**

#### **DESIGNATED SITES**

##### **National sites**

The two sites below overlap to some extent.

##### **Otter Estuary SSSI**

The scheme falls partly within the following nationally designated nature conservation site:

- Otter Estuary SSSI

The designated features include a range of saltmarsh communities, tall herb and scrub supporting breeding and overwintering birds. Otterton Point is an important location for vertebrate palaeontology. Further information on the special interest features can be found on Designated Sites View.

Minor changes within the existing intertidal SSSI habitats are not considered to significantly affect the designated features. Loss of short sections of hedgerow within the SSSI are not considered to be significant.

Unit 5 of the SSSI would change from freshwater to intertidal habitat types. The freshwater habitats are artificially maintained behind the embanked footpath, where naturally, saline-influenced habitat would exist. Returning this area to a gradation between lower marsh and upper marsh should be concluded as a positive transition.

In accordance with paragraph 175(b) of the NPPF, “the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSI’s.”

#### Mitigation

Given the proximity of works to the SSSI, such as around South Farm Road, and the associated potential for damage as a result of storage or disposal of materials, and operation of machinery or plant within the SSSI we advise that the CEMP should specifically prevent damage and any incidents are reported to Natural England.

The mitigation measures listed in section 8.9.2 of the ES will moderate SSSI impacts and should be conditioned. We support the retention and gapping up of the hedgerows bordering the South West Coast Path to reduce human disturbance to overwintering birds. The retention of the existing screening hedgerows should be made clearer in the Landscape General Arrangement plans and conditioned.

#### Enhancement

Public sector bodies have a duty to take reasonable steps to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest under Section 28G of the Wildlife and Countryside Act 1981 (as amended).

We advise that there may be potential to improve the management of sections of the SSSI, such as the southern section of unit 3, close to South Farm Road.

#### Otter Estuary Marine Conservation Zone (MCZ)

The proposed works, as set out in the information provided, are sited partly within a Marine Conservation Zone (MCZ) designated under the Marine and Coastal Access Act 2009. The Otter Estuary MCZ has been designated due to the presence of:

- Coastal saltmarshes and saline reedbeds
- Intertidal coarse sediment
- Intertidal mud

The above MCZ was formally designated on the 31 May 2019. Further information, including a factsheet, can be found at <https://www.gov.uk/government/publications/marine-conservation-zones-otter-estuary>

Having reviewed the evidence, we believe that there is no significant risk that the scheme as submitted will hinder the conservation objectives of the MCZ; so long as it is undertaken in strict accordance with best practice pollution control measures which are conditioned in a Construction Management Plan (CEMP) and monitoring is undertaken.

We advise that additional work on the shadow MCZ Assessment is required to enable it to be sufficiently rigorous and robust to be adopted by the LPA as set out in the attached Annex 1.

## World Heritage Site

The Dorset and East Devon Coast World Heritage Site (WHS), otherwise known as the Jurassic Coast, was inscribed in 2001 for its internationally significant geology, palaeontology and geomorphology. The WHS includes the shingle beach and coastal cliffs.

Natural processes and evolution of the coast and estuary should be encouraged as far as possible in this scheme. Natural England has no objection in relation to the WHS. Over engineering within the SSSI or further reinforcement of the shingle bar would be damaging both biologically and geologically. The diversion of the sewer overflow pipe is necessary to avoid the need to introduce new erosion protection measures.

## PROTECTED LANDSCAPES

We do not consider that the proposed development would compromise the purposes of designation or special qualities of the East Devon AONB. We would advise that the proposal is determined in line with relevant NPPF and development plan policies and that landscape advice is obtained from the East Devon AONB Partnership.

## LOCAL SITES

We would expect the Local Planning Authority (LPA) to assess and consider the other possible impacts resulting from this proposal on the following when determining this application:

- local sites (biodiversity and geodiversity), including County Wildlife Sites;
- local or national biodiversity priority habitats and species.

Natural England does not hold locally specific information relating to the above. These remain material considerations in the determination of this planning application and we recommend that you seek further information from Devon Wildlife Trust in order to ensure the LPA has sufficient information to fully understand the impact of the proposal before it determines the application.

## PROTECTED SPECIES

We have not assessed this application and associated documents for impacts on protected species.

Natural England has published Standing Advice on protected species. The Standing Advice includes a decision checklist which provides advice to planners on deciding if there is a 'reasonable likelihood' of protected species being present. It also provides detailed advice on the protected species most often affected by development.

You should apply our Standing Advice to this application as it is a material consideration in the determination of applications in the same way as any individual response received from Natural England following consultation.

The Standing Advice should not be treated as giving any indication or providing any assurance in respect of European Protected Species (EPS) that the proposed development is unlikely to affect the EPS present on the site; nor should it be interpreted as meaning that Natural England has reached any views as to whether a licence may be granted.

## Royal Society For The Protection Of Birds

The RSPB very much welcomes and strongly supports the Lower Otter Restoration Project (LORP) and the nature-based solutions it offers to help address the impacts of our changing climate, increasing flood events and loss of coastal habitats. We believe the Project has the potential to be a national exemplar of how landowners, statutory bodies and the nature conservation sector can collaborate to deliver landscape scale change that helps address the climate and ecological emergency, bringing huge benefits for nature and people.

Coastal habitats remain very vulnerable to climate change and sea level rise. Consequently, intertidal habitats such as mudflats and saltmarshes are getting squeezed against fixed flood defences. The RSPB calculates at least 60 hectares of intertidal habitat is predicted to be lost each year in the UK unless action is taken (<https://www.rspb.org.uk/our-work/conservation/projects/sustainable-shores/>). We feel that this is a well thought out and important project that presents a creative and meaningful response to help address this habitat loss.

The LORP meets a range of national and local planning and environmental policies and priorities as detailed in chapter 5 of the Environmental Statement. It will also provide required and vital compensatory intertidal habitat for losses resulting from coastal squeeze in the Exe Estuary, a Special Protection Area (SPA) and Ramsar site notified for internationally important populations of wintering waders and wildfowl. We therefore strongly support the Project's aim to create 28ha of mudflats and 27ha of transitional marsh and saltmarsh and its wider aims to "improve the natural functioning, ecological health and environmental status of the river, demonstrate climate change adaptation and reduce risk to wildlife and public infrastructure under future climate change."

In addition to directly compensating habitat loss from the Exe Estuary SPA, the restoration of the Lower Otter will bring significant wider ecological benefits through the re-creation of a more naturalised estuary that enables a more dynamic transition from a fresh water to a brackish system. This should greatly add to the value and integrity of the existing Otter Estuary Site of Special Scientific Interest and the vulnerable wildlife that depends on it, including wintering waterbirds. It should also increase the area's resilience to our changing climate through restoration of natural processes and provision of the natural flood risk management benefits that saltmarsh and mudflat are known to provide.

We note that a Landscape and Environment Management Plan will be produced with full details of habitat enhancements, mitigation and monitoring. This plan will be essential to achieve the best ecological outcome from this important scheme and we would be willing to support the development of this plan if further input is required.

As one of the scheme's key objectives is to provide compensatory habitat for losses in the Exe Estuary SPA and Ramsar site, ensuring waterbirds using the new habitats are not disturbed is critical to the successful ecological outcome of the scheme. We welcome the mitigation measures set out in 8.9.2 of the Environmental Statement to minimise disturbance and if these are implemented effectively they will enable people to access and enjoy this wildlife-rich landscape without causing significant disturbance impact on the wildlife. However we note these measures relate to land-

based disturbance only and we are aware of the current increase in water-based recreation in the Otter Estuary and the potential for this to grow further and extend into winter in suitable weather conditions. In order to encourage birds into the new habitat and to ensure their undisturbed use of intertidal mud and high tide roost islands, it is essential that water-based recreational access to the new habitat is prohibited (eg through a bylaw) from the outset.

We welcome that a Visitor Management Strategy will be developed to ensure a high quality experience for local people and visitors and agree that a monitoring plan should be introduced to help ensure the ecological and environmental outcomes are delivered and not negatively impacted by recreation. It is critical that any planting or infrastructure identified to mitigate recreational disturbance is agreed prior to and implemented during the construction phase. We recommend the Visitor Management Strategy also includes a review schedule in addition to monitoring. We would welcome an opportunity to comment on a draft.

We have included more detailed technical comments in an appendix to this letter which we hope are helpful in supporting a successful outcome. We applaud this ambitious proposal and the work of the Clinton Devon Estate, the Environment Agency and other organisations to deliver a positive impact for nature in East Devon at a scale that has national significance.

### South West Water

With reference to the planning application at the above address, the applicant/agent is advised to contact South West Water if they are unable to comply with our requirements as detailed below.

#### Asset Protection

Please find attached a plan showing the approximate location of a public sewers in the vicinity. South West Water will need to know about any building work over or within 3 metres of a public sewer or lateral drain.

We will discuss with you whether your proposals will be affected by the presence of our apparatus and the best way of dealing with any issues as you will need permission from South West Water to proceed.

### Devon Wildlife Trust

Devon Wildlife Trust would like to offer our **support** for the Environment Agency application for the Lower Otter Restoration Project. This is an ambitious landscape scale project that has the potential to radically improve the ecological function of the Lower Otter Valley with very significant benefits for biodiversity and people's connection with nature.

As a result of the highly complex nature of this project, DWT has focussed our comments on the potential high-level outcomes which would be delivered.

### *Linking with policies*

The large-scale habitat restoration proposed by this project should be supported in accordance with the National Planning Policy Framework (NPPF) section 175d: *“When determining planning applications, local planning authorities should apply the following principles:*

*d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.”*

In addition, the net gain to biodiversity delivered by this project through largescale restoration of estuarine and wetland habitats, alongside the enhancements to ecological networks in the Lower Otter and its wider setting (including its role for birdlife within a network of estuaries in South and East Devon) satisfy NPPF section 170d:

*“Planning policies and decisions should contribute to and enhance the natural and local environment by:*

*d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;”*

The project fulfils NPPF section 172, which states:

*“Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads.”*

East Devon Area of Outstanding Natural Beauty, in which the project is set, has the following policies, which the project helps to deliver:

*“BG1 In partnership with others, support and encourage conservation and enhancement actions for key habitat and species within the AONB that maintain and enhance landscape character and the historic environment”*

*“C1 Conserve and enhance the tranquil, unspoiled and undeveloped character of the coastline and estuaries and encourage improvements to coastal sites damaged by past poor-quality development or intensive recreational pressure”*

The project delivers in line with strategies 5, 45, 46 and 47 of the East Devon Local Plan 2013-2031, in particular *“Maximise opportunities for restoration, enhancement and connection of natural habitats” in strategy 47.*

### *Natural processes in rivers*

Re-connecting rivers to their natural floodplains, reversing the negative impacts of hundreds of years of human modification, is crucial if we are to help these threatened ecosystems adapt naturally and sustainably to climate change. The importance of ‘Making Space for Water’ is now viewed by DEFRA as a crucial component of preparing the country to face the dual challenges of sea level rises and increasing intensity of storm events. The wildlife and local communities of the Lower Otter Valley face many threats as its ageing infrastructure is placed under

increasing strain associated with the pressures arising from a rapidly changing climate.

This project seeks to restore the ecological function of the river and estuary enabling it to behave more naturally once again. In so doing it will restore increasingly pressured intertidal habitats and improve the connection between people and wildlife in this, one of the most popular destinations in Devon. We fully support this bold vision of working with nature rather than against it, and firmly believe the project has the potential to be seen as an exemplar in this practice.

#### *East Devon Catchment Partnership*

The Devon Wildlife Trust co-hosts the East Devon Catchment Partnership alongside Westcountry Rivers Trust. This partnership is supported by a very broad range of stakeholders with the shared goal of achieving significant improvements in ecological health of watercourses in the district. This initiative is listed under the East Devon Catchment Action Plan as being of great value in meeting EU Water Framework Directive and England Biodiversity 2020 Objectives for the River Otter.

#### *Engagement*

The Devon Wildlife Trust has followed the development of this initiative with great interest since it was initially proposed in 2012. Managed realignment schemes such as the Lower Otter Restoration project are highly complex to deliver and will involve substantial and often highly contentious landscape changes.

We recognise that the scale of change will be a genuine cause for concern for the local community, landowners and visitors who know, love and work in this landscape. But conversely many are very excited by the prospect of revived intertidal habitats.

Key to achieving success will be working closely with all audiences, if the project is given permission to progress, which enable people and wildlife to adapt to change and thrive in this changing landscape.

#### *DWT's relevant experience*

DWT has developed considerable expertise in the delivery of a range of complex wetland restoration and recreation projects. In the Culm National Character Area we have worked in partnership with a wide range of partners and alongside farming communities to restore and recreate over 5,000 hectares of wet grasslands. Over 100 hectares of wetland was recreated from former sitka spruce plantation which now forms integral components of traditional farming systems.

Of particular relevance to the River Otter has been our successful partnership with the Environment Agency where a regulated tidal exchange gate was installed at South Efford Marsh in the Avon estuary of South Devon. Over a short space of time the ecological value of the site has been transformed and alongside that a very popular reserve has been established and new audiences engaged.

#### *Links to other projects*

Our organisation has a particular interest in the River Otter as we lead the River Otter Beaver Trial and also Upstream Thinking projects. We see this initiative as complementing our own work by improving the wildlife value of this important

catchment and people's connection with it yet further.

Devon Wildlife Trust would welcome the opportunity, where appropriate, to provide advice and support in the project design, delivery and ongoing maintenance. Crucially this would include engagement with the local communities and new audiences which would be attracted during the various project phases. In summary, we would like to provide our support for this application for the net benefits it will provide for biodiversity and catalyse natural processes in this landscape. If successful, we look forward to working closely with the project partners on the Lower Otter Restoration Project over the coming months.

### Environment Agency

Thank you for your consultation of 23 October 2020 in respect of the above planning application. We have reviewed this planning application in accordance with our duty as a statutory consultee and independent of our project team.

#### Environment Agency position

We fully support the proposed scheme, which will create extensive areas of intertidal habitat and provide compensatory habitats to support the features of interest within the Exe Estuary SPA/SSSI/Ramsar. However, we recommend that the subsequent permission includes a condition to secure a groundwater investigation, monitoring and mitigation strategy in respect of potential impacts from saline intrusion to groundwater resources.

Our recommended condition together with the reasons for our position and detailed advice in relation to groundwater, flood risk, biodiversity and the general water environment are provided below.

#### Condition - Groundwater investigation, monitoring and mitigation

No breaching of the banks approved by this permission shall take place until a monitoring and remediation/mitigation strategy to deal with the risks to groundwater associated with saline inundation of the site has been submitted to and approved, in writing, by the local planning authority. The strategy shall include the following components:

- 1) A preliminary risk assessment which has identified a conceptual model of the site indicating sources, pathways and receptors, including those off site.
- 2) A site investigation (including the area known as Little Marsh) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 3) The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation/mitigation strategy giving full details of any measures identified as necessary and how they are to be undertaken.
- 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation/mitigation strategy in (3) are complete and identifying a timeframe/timetable and any requirements for longer term monitoring of salinization linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.

Reason: To ensure the protection of local groundwater resources.

#### Advice - Groundwater resources

We have reviewed the Groundwater Risk Assessment and Modelling Reports (Appendix G3 of the Environmental Statement) and we are satisfied that the proposed development has been appropriately characterised and that the impact upon the surrounding groundwater environment has been appropriately assessed. The site investigation, risk assessment and groundwater modelling have utilised industry best practice and have produced a coherent conceptual model for the site, informed by site-specific data, the regional Otter Valley Groundwater Model, and site-specific modelling.

Nonetheless, our review of Chapter 10 of the Environmental Statement (ES) has raised some issues which will need to be clarified prior to the banks being breached. In particular we consider that the following information will need to be provided to support the Groundwater Monitoring Strategy recommended in Table 10.10 of the ES:

- Clarification on the difference between low and medium 'Magnitude of Impact' for groundwater in Table 10.2;
- Further justification of how cumulative salinization of a Principal Aquifer used for public water supply has been classified as 'low negative' magnitude of impact (Page 10-27).
- A section detailing the full range of Mitigation Measures considered for groundwater should be included, explaining why they were rejected and how it was concluded that a ground investigation and monitoring strategy were arrived at, as the best options.
- Clarification on whether the effect on groundwater is 'negligible' (Section 10.11.2) or 'moderate adverse to negligible' (Table 10.10).

Our view is that these requirements can be secured by way of a suitably worded planning condition. In particular these points should be clarified when compiling the detailed risk assessment in part (3) of our suggested condition.

#### Advice - Flood and coastal risk management

Much of the surrounding area is already at risk of fluvial, tidal and surface water flooding with Budleigh Salterton, East Budleigh and Otterton having an extensive flood history (e.g. July 2012, November 2012, and December 2014). We also have historical records from 2000 and 1968. It's important to note that this is not a flood defence scheme and does not aim to reduce the current flood risk. However, the Flood Risk Assessment (FRA) and flood modelling results indicate that in fluvial events there will be a reduction in flood depth (<100mm) throughout the study area for all modelled flood events. A thorough review of the FRA demonstrates that flood risk will not be detrimental for third parties.

The FRA looks in detail into the potential receptors that could be impacted upon by the scheme, these include both properties and infrastructure. Modelling for the

scheme takes both fluvial and tidal extremes into account and the FRA conforms to climate change guidance and assesses flood risk with an increase in 85% peak flow (upper end). The model results show that in fluvial events there is generally a small reduction in flood depth (<100mm) throughout the study area for all modelled events. Model results for present-day tidal events show that there will typically be a small reduction in depth. With allowance for climate change, the model results show that a significant proportion of the floodplain would be inundated anyway in the baseline present day scenario (without the scheme in place), although the breach does allow some additional water to enter this area, resulting in a small increase in depth.

The following sets out the findings of the FRA in various areas of the study area:

#### Granary Lane

With the current arrangement, frequent fluvial flood events from tributaries flowing from the west as well as rare tidal flood events that overtop the existing embankments cause water to become trapped which then drains out slowly over several days. During these scenarios the Granary Lane outlets are tidally locked for period of days, creating risk of surface water flooding to the properties and restricting the pumping station outlet. The breaching of the embankments as part of the scheme will reconnect the floodplain and therefore during large flood events water will be able to drain back out as the tide recedes and will not be trapped, lessening these associated flood risks.

A 1D modelling assessment was carried out examining the surface water drainage network to assess the four outfalls mentioned along Granary Lane. This modelling has demonstrated that the scheme and introduction of daily tidal inundation will not cause surface water flooding to Granary Lane as a result of tidal locking. To ensure that water does not back up through surface water outlets and onto Granary Lane tidal flaps/non return valves will be installed onto culvert outlets as part of the scheme (discussed in section 8 of the FRA).

Modelling was also undertaken to ensure that the emergency outfall from the Lime Kiln pumping station would not be compromised. It has been found that water would continue to drain effectively out of the storage tank through the overflow pipe in a MHWS event. The Pumping Station storage tank and internal overspill weir, upstream of the emergency outfall pipe did not see increased water levels during either of the events modelled.

#### Kersbrook

The Kersbrook is a small ordinary watercourse which discharges into the Trunk Drain adjacent to South Farm Road Cottages. A non-return valve will be installed into the new culvert to mitigate tidal flood risk. Although in two of the model runs flood depths increase marginally from impeded drainage and tidal locking, peak levels are still below the property threshold level (4.5mAOD) meaning that flood risk to property is not increased.

In order to lessen the risk posed by tidal locking the new South Farm Road highway will include an increased sized culvert outfall into the Kersbrook (at least 900mm). A higher level overspill culvert with non-return valve will be installed adjacent to allow the backing up of surface water to drain quicker in extreme events. Further

mitigation includes raising levels of a small section of existing highway used as access to numbers 1 and 2 South Farm Cottages which will allow the access road to remain dry in less extreme flood events. In the larger events this route would be affected regardless of whether the scheme is implemented or not. Consultations with the landowner have agreed in principle that No.3 South Farm Cottage can continue (as they do now) to use the access (vehicle and pedestrian) of No. 1 and No. 2 during emergencies or surface water flooding events.

Similar to Granary Lane, present day flood events overtopping the embankment can inundate this area of the Kersbrook, with the duration lasting several days because the floodplain cannot drain freely. Therefore, the proposed Lower Otter Restoration Project will also reduce the duration of flooding in extreme events in this location.

#### Frogmore Road

In this area fluvial flood risk will be reduced as a result of the scheme. For tidal flood events both the pre and post scheme flood modelling results show a small increase in flood depths during the largest future flood scenarios to some land and properties in this area. However, further analysis and the site survey of threshold levels shows that changes in flood levels to properties are within normal modelling tolerance ( +/- 5cm) and do not increase the flood risk to any property during the design flood events (tidal 0.5% chance - including with an allowance climate change). We understand from the project team that the additional site survey will be submitted to your authority.

We are also aware that the project team are planning to engage further with residents of Frogmore Road to provide further explanation of the modelling results and to allay concerns about flooding

#### Erosion

The expected erosional changes and increased flows/velocities at the mouth will occur through natural processes, which will help restore the estuary to its more natural state providing a beneficial change to the surrounding environment.

Although short term rapid changes are expected, these erosional changes are predicted to slow in the medium term as the system reaches a quasi-equilibrium state to behave in a way to that similar to present day.

Although there are uncertainties around the future geometry of the estuary mouth, potential erosion is a result of natural processes and would take place with or without the scheme in place. Sensitivity testing has been undertaken to determine whether there are potential indirect impacts of the scheme on flood risk due to changes in estuary mouth morphology. The change in geometry results in an increase in water levels across the site of approximately 100mm in the MHWS event.

The South West Water Pipe which runs across the estuary mouth is proposed to be diverted to limit risks of damage from the increased tidal prism and any associated erosion.

#### Advice - Biodiversity

The proposal will result in a net benefit for wildlife through the creation of extensive areas of intertidal habitat, the provision of compensatory habitats to support the

features of interest within the Exe Estuary SPA/SSSI/Ramsar site and through the reconnection of the Budleigh Brook to the River Otter and its floodplain. It is acknowledged that there will be changes to some existing habitats of wildlife value that will not benefit all plant and animal communities currently present but it is considered that any losses will be more than compensated for by the creation of new habitats.

#### Advice - Water quality

We are satisfied that potential impacts on bathing waters have been appropriately considered and risks identified. The timing of operations will be considered to minimise amenity impact and will avoid any bathing water compliance issues. The sewer running under the mouth of the Otter will be rerouted and protected from scour.

Nonetheless, we note the consultation response from South West Water which sets out its requirements with regard to works affecting its network. We recommend that the applicant clarifies how South West Water's requirements are being satisfied.

#### East Devon AONB

##### Summary (Full response on website)

It can be seen from the above details that the lower Otter valley is an extremely important landscape area for wildlife as well as for its function as a floodplain and estuarine habitat. It is no coincidence therefore that the area is identified as one of the special qualities of the AONB. The iconic pine trees on the headland at Otterhead are recognised across the region and beyond and with its access network and proximity to the World Heritage Site coastline and South West Coast Path National Trail, the area is an extremely popular visitor attraction as well as an important informal recreational area for the nearby local communities of Budleigh Salterton, East Budleigh, Otterton and further afield. Never has this been more apparent than in current times.

The NPPF calls for valued landscapes to be conserved and enhanced with the greatest weight being given to conserving landscape and scenic beauty in National Parks and Areas of Outstanding Natural Beauty (AONBs) (NPPF 172). Paragraph 172: Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas and should be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited.

The AONB team has been represented on the Lower Otter Restoration Project (LORP) alongside other AONB Partnership organisations; our involvement being identified as a Priority Action in the AONB Partnership Plan (2109).

In linked work, the AONB has also sought to integrate the undergrounding of the 11Kv powerlines in the estuary area through a landscape enhancement programme with Western Power Distribution; this has sought to align with the France Alderney

Brittany (FAB LINK) EU power supply project. We also collate data on the use of the footpath network in the river valley as one of the most popular routes in East Devon. There is a clear link to the national and local Landscape Character Assessments (LCA) for this proposal. These landscape assessments refer to the opportunity to restore and enhance estuarine habitats, manage and expand wetland habitats, plan for coastal change and adaptation, identify and create areas of new coastal and estuary fringe habitats and maintain/manage riparian and estuarine natural and seminatural habitats and natural channels, which currently serve to alleviate coastal flooding, divert nutrient and sedimentation sources and would aid resilience to future sea level rise.

The Devon Redlands National Character Area (NCA) identifies landscape opportunities to “ Plan for coastal change as a result of erosion and climate change induced sea level rise, maintaining the overall extent and quality of estuarine and coastal habitats, notably saltmarsh, mudflats, reedbeds and sand dunes (including the internationally important Exe Estuary and Dawlish Warren SAC) and identifying options for future adaptation and managed realignment”.

The EDDC East Devon LCA specifically refers to the project proposals in the LCT 4A/4B assessments. “Support opportunities to re-naturalise the Otter Estuary, as set out in the Lower Otter Restoration Plan.”

These statements fundamentally recognise that the landscape in these areas, for wider environmental priorities and gains, needs to consider and plan for change and adaptation.

The character assessments recognise the need for change and the fact that in the current climate crisis, national, regional and local ambitions for climate adaptation, carbon reduction, increased tree planting and net zero are all going require adaptation and change in our landscapes. Some will be more challenging than others; all will impact on local communities in varying ways. This proposal represents a positive adaptation opportunity to the pressures facing the lower Otter valley and addresses many environmental objectives. It is a hugely complex proposal that has also sought to address multiple local needs and other projects such as the FAB LINK project, Budleigh Salterton Cricket Club relocation and access requirements, whilst providing compensatory habitat and seeking to address future climate, flood and coastal risks.

The applicant confirms that the proposal will undoubtedly impact on the landscape character of the AONB. However, in seeking to return the area to a more sustainable and naturalised river valley and estuarine habitat, the former features and landscape characteristics created over centuries of human influence will need to be altered or removed or reversed, with adaptations to maintain access and habitat mitigation/replacement provided elsewhere within the wider area.

We are aware from our engagement in the LORP that the applicant has sought to address the concerns and worries of stakeholders. It will be important that the positive environmental, habitat and access enhancements proposed and outlined in this application do not serve to exacerbate any of the wider concerns expressed in the consultations thus far. It will also be important that the approach taken to

additional infrastructure is landscape led and there is scope to reconsider design and implementation aspects further to lessen any impacts.

#### Planning Consultation Response

With this in mind, there are subsequent elements/considerations that the applicant has referenced and which will need to be addressed in more detail should the application be approved, in order to reduce potential impacts and ensure a successful scheme is delivered for all.

We suggest that community/stakeholder engagement in the following should play an important role in the implementation and on-going management of this ambitious and forward-looking proposal:

- A Landscape and Environment Management Plan with opportunities for citizen science and community engagement and measures that serve to enhance the SSSI and MCZ
- A Visitor Management Strategy that addresses all forms of access and transport both land and water based and aligns closely with an....
- Interpretation Strategy that includes how the site and area is promoted more widely within East Devon and Devon/SW
- Infrastructure/design elements

#### World Heritage Site/Jurassic Coast - Sam Scriven

The Dorset and East Devon Coast World Heritage Site (WHS), otherwise known as the Jurassic Coast, was inscribed in 2001 for its internationally significant geology, palaeontology and geomorphology. It is protected by a variety of UK planning and conservation laws and by specific guidance within NPPF and NPPG.

The outcomes for the Dorset and East Devon Coast World Heritage Site (WHS) as a result of the Lower Otter Restoration Project (LORP) will be overwhelmingly positive, reconnecting the active shingle beach that lies within the WHS with a more natural fluvial estuarine system behind it. This supports the following management policies for the WHS as set out in the Jurassic Coast Partnership Plan 2020 – 2025:

CSS1: The conditions of GCR sites and SSSIs will be maintained and / or improved, when appropriate and possible, in ways that are consistent with or build on natural processes, taking account of other conservation objectives.

CSS5: The conservation and enhancement of biodiversity, the historic environment and landscape character in the WHS and setting will be supported in ways that are complementary with its OUV.

In this context, the proposals set out in LORP will improve both the OUV and the Setting of the WHS.

We note that the project includes the provision of interpretation at various locations. In support of Jurassic Coast Partnership Plan Engagement and Learning policies (EL1 - EL7) we recommend that a proper interpretation plan is created for the whole project area in order to make effective use of the significant opportunity for public engagement and interpretation. Rarely do landscape-scale interpretation

opportunities like this arise. Appropriate levels of funding and resources should be allocated in order to maximise the public benefit of the project. The Jurassic Coast Trust would be keen to collaborate with the project leaders to pursue these opportunities.

### Other Representations

At the time of writing the report, 565 representations have been received, which include 295 in support and 240 objections. A wide range of comments have been made. The most frequent reasons for objection are: Lack of consultation; loss of wildlife; flooding (specifically to Frogmore Road, Granary Lane and Otterton; Insufficient parking at South Farm Road; the wrong scheme; loss of trees and hedgerows; too many visitors; issues to do with the landfill site; water sports using the estuary; mosquitoes; traffic in Granary Lane and South Farm Road; contrary to the Neighbourhood Plan; erosion of the spit at Otter Mouth; not joined up with the FAB Link project; loss of agricultural land, and issues during construction.

The most frequent reasons for supporting the application are: Enhancement of habitat; will manage the estuary better; will adapt to climate change; improve public access; benefit local economy; and preserve footpaths.

It is clear from the consultation period and responses that campaigns, both for and against the proposal, have generated comments, some of which are from outside of the District.

## **POLICIES**

### Adopted East Devon Local Plan 2013-2031 Policies

Strategy 3 (Sustainable Development)

Strategy 5 (Environment)

Strategy 7 (Development in the Countryside)

Strategy 21 (Budleigh Salterton)

Strategy 33 (Promotion of Tourism in East Devon)

Strategy 44 (Undeveloped Coast and Coastal Preservation Area)

Strategy 45 (Coastal Erosion)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

Strategy 47 (Nature Conservation and Geology)

Strategy 49 (The Historic Environment)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

D3 (Trees and Development Sites)

EN4 (Protection of Local Nature Reserves, County Wildlife Sites and County Geological Sites)

EN5 (Wildlife Habitats and Features)

EN6 (Nationally and Locally Important Archaeological Sites)

EN8 (Significance of Heritage Assets and their setting)

EN13 (Development on High Quality Agricultural Land)

EN14 (Control of Pollution)

EN16 (Contaminated Land)

EN19 (Adequacy of Foul Sewers and Adequacy of Sewage Treatment System)

EN21 (River and Coastal Flooding)

EN25 (Development Affected by Coastal Change)

E20 (Provision of Visitor Attractions)

RC1 (Retention of Land for Sport and Recreation)

RC4 (Recreation Facilities in the Countryside and on the Coast)

TC2 (Accessibility of New Development)

TC4 (Footpaths, Bridleways and Cycleways)

TC7 (Adequacy of Road Network and Site Access)

### Neighbourhood Plans

#### Budleigh Salterton Neighbourhood Plan (Made)

Policy H4: Built-up Area Boundary

Policy B1: Identity of town and seafront

Policy B2: Protection of key views and vistas

Policy B3: Heritage Assets

Policy NE1: Conservation of the Natural Environment

Policy NE3: Conservation of Biodiversity

Policy NE4: Maintain Trees and Hedgerows

Policy NE5: Development within the Coastal Preservation Area

Policy CLW2: Relocation of Budleigh Salterton Cricket Club

### East Budleigh Neighbourhood Plan (Made)

Policy P3: Protection of highest grade agricultural land

Policy L1:- Enhancing Recreational Facilities

Policy L2 – Budleigh Salterton Cricket Ground

Policy G1 - To protect and enhance the network of public rights of ways and bridleways around the Parish

Policy N1:- Protecting and enhancing the landscape, biodiversity and local countryside character

Policy B1: Heritage Assets and their Setting Policy B2 – General Design Principles

Policy F1 - Flood Risk Assessment

Policy F2 - Surface Water Run-off

### Otterton Neighbourhood Plan (In Preparation)

Protecting and Enhancing the Conservation Area and other Heritage Assets – Policy ONP2

Protecting and Enhancing the Natural Landscape – Policy ONP4

Protecting and Enhancing Wildlife in the Natural Environment – Policy ONP5

Traffic and Travel Around the Parish – Policy ONP8

### Government Planning Documents

NPPF (National Planning Policy Framework 2019)

### **Site Description**

The site comprises the whole of the Lower Otter Valley, an area of historic floodplain south of East Budleigh and Otterton, extending to the mouth of the Otter at Budleigh Salterton. It comprises a range of intertidal habitats including saltmarsh and intertidal creeks. A network of freshwater drains crosses the site and a trunk drain lies along the western boundary. At the mouth of the estuary a shingle spit has been formed.

The estuary and marshes support a wide range of bird species, including waders and wildfowl, forming a network of habitat extending from the Axe to the Exe.

The site is crossed at roughly the midway point by South Farm Road, which serves a number of farms and buildings, and a historic landfill site. A number of footpaths, including the South West Coast Path, cross the site. Adjacent to the Lime Kiln Car Park at the southern end of the site, is Budleigh Salterton Cricket club. The site is bounded by properties on Granary Lane and Frogmore Road to the West.

### **Proposal**

It is proposed to restore the historic floodplain of the River Otter. This would be achieved by creating breaches in existing embankments to allow water from both the River Otter and the Estuary to inundate the site, creating intertidal saltmarsh and mudflats. In addition, South Farm Road will be realigned and raised at a point just to the south of the existing road, and a small car park created at its western end. A new road bridge will be required, and a new footbridge to the South. Existing footpaths

will be realigned and the landfill site capped and planted with grassland and woodland. The spit to the South will be allowed to evolve naturally, necessitating the removal of the southern part of the loop path known as Donkeys Turn. The cricket club will be moved from its current location to land off of East Budleigh Road, permission for which has been granted under a separate planning application. In summary, the proposal would involve the following:

- Creating a 70m breach through the River Otter Estuary embankment near the Lime Kiln Car Park in Budleigh Salterton;
- Providing a pedestrian footbridge over the 70m wide breach to maintain access to the South West Coast Path;
- Creating a 200m wide breach in Little Bank and covering the existing spillway with earth;
- Creating a 170m wide breach in Big Bank;
- Reinstating the public footpaths through the breached Little Bank and Big Bank;
- Realigning the Budleigh Brook and removing the aqueduct across Little Marsh;
- Constructing a cattle crossing (bridge) for the realigned Budleigh Brook;
- Raising and re-aligning South Farm Road, including installation of a 30m span highway bridge in the west of South Farm Road, creation of a car park for the public on its western end; and,
- Partially removing the western portion of the landfill (on South Farm Road), additional fill material placed as cover over remaining landfill area and providing perimeter erosion protection

For clarity, the proposal is not seeking to create a visitor attraction.

## **ANALYSIS**

The main issues for consideration are the principle of development, flooding, biodiversity, trees and landscaping, highways and parking, footpaths, historic environment impacts and construction impacts.

### **Principle of Development**

The site is within the open countryside but is subject to a number of designations. The entire site is within the East Devon AONB, whilst the estuary and cliffs at Otterton point are designated as a Site of Special Scientific Interest (SSSI). The Otter Estuary Marine Conservation Zone is located within the area, and the spit lies within the Dorset and East Devon Coast World Heritage site. Parts of the site are designated within the local plan as within the Coastal Preservation Area, County Wildlife Site, the floodplain and designated as open space (the cricket club).

In addition to the Local Plan and three neighbourhood plans which cover the parishes of Budleigh Salterton, Otterton, and East Budleigh, there are a number of other plans and strategies which need to be referred to, including the Devon Waste Plan, the National Flood and Coastal Erosion Risk Management Strategy for England, the Durlston Head to Rame Head Shoreline Management Plan Review (SMP) , the South West River Basin Management Plan, the Dorset and East Devon Coast World Heritage Site Management Plan and the East Devon AONB Partnership Plan, as well as the NPPF.

The purpose of the project is for managed realignment of the estuary and to meet the Environment Agency's statutory requirement to compensate for habitat loss. Due to likely changes due to climate change, action is needed to prevent inundation due to flooding, and to restore the ecological health of the valley.

Concerns regarding increased visitor numbers and the impact on the area have been raised, however the proposal does not include any plans for a visitor centre or features and is not intended to encourage additional visitors to the area. It is acknowledged that the creation of intertidal saltmarsh and mudflats would encourage a number of wading birds, and therefore potentially visitors to view those birds, however the scheme is not comparable to Seaton Wetlands which actively encourages visitors by way of a visitor centre and bird hides. It is acknowledged that this is a busy area with walkers using the coast path in particular, and it is therefore critical that this path is maintained and connections to the wider footpath network made clear.

The proposal would clearly significantly change the area, particularly by way of breaches to the embankments which would irreversibly change the habitat and visual appearance of the estuary.

Policies within the local plan and elsewhere refer to conserving the landscape character of the area, increasing biodiversity, and safeguarding public access. The NPPF requires net biodiversity gains where possible, and for the conservation and enhancement of priority habitats.

The application is supported by the South West Coastal Group who comment that LORP will deliver significant biodiversity and recreation gains for the river and its estuary; will establish a more sustainable management regime, and will recreate the river to the floodplain to achieve good ecological potential.

The RSPB comment that the project has the potential to be a national exemplar of collaboration to help address the climate emergency and to bring huge benefits for nature and people; will directly compensate loss from the Exe Estuary SPA, and bring wider ecological benefits through the creation of a more naturalised estuary that enables a more dynamic transition from a freshwater to a brackish system.

Natural England state that there will be a major increase in the area of habitats created and maintained by natural process, and request screening of footpaths to prevent bird disturbance.

The Devon Wildlife Trust state that the project delivers in objectives set out in the Local Plan, in particular Strategy 47, as it reconnects the river to its floodplain, which will restore the intertidal habitats and increase the connection between people and wildlife.

The AONB Partnership comment that the proposal represents a positive adaptation opportunity to the pressures facing the lower Otter and addresses many environmental objectives, and has sought to address many local needs and other projects whilst providing compensatory habitat and seeking to address climate, flood and coastal risks.

The Jurassic Coast Trust comment that the outcomes of the project on the World

Heritage Coast will be overwhelmingly positive, reconnecting the active shingle beach with a more natural fluvial estuarine system behind it, which supports policies within the Jurassic Coast Partnership Plan.

There would appear to be strong support from the above bodies which shows the importance of the scheme and the need for it in terms of ecology, biodiversity and geomorphology, and in maintaining the area for recreation.

To balance this, the CPRE comment that they are not convinced of the need for the project and consider that climate change impacts have been overstated.

There are a number of detailed matters which are described below:

## **Flooding**

The proposal site lies entirely within the flood zone of the River Otter and is susceptible to fluvial, coastal and surface water flooding. Without the implementation of a restoration of flood management scheme the impact of future climate change is expected to increase the risk of uncontrolled breaching of the existing estuary embankment, inundating the area with tidal water, which would affect South Farm Road (and thus cut off properties reliant on this road), as well as a number of the houses, gardens and farm buildings backing on to the area.

The proposed scheme will result in the inundation of the floodplain by tidal water on a daily basis. Hydraulic modelling has been undertaken which estimates the impact of the proposal on the area. The model shows that in fluvial events there is a small reduction (less than 100mm) in flood depth throughout the study area. However where there are newly created channels there will be an increase in flood depth. A number of receptors (Generally properties) have been assessed for flood risk potential in extreme flood events. The model shows that 1-3 South Farm Cottages will not flood, however there is the potential for the access to No. 3 to be cut off at spring tides every two years.

One property has the potential for an increase in flood risk (Thorn Mill Farm at Frogmore Road) and this is in a very limited scenario; that of a 0.5% (1-in 200-year) annual probability tidal event, including the climate change effects predicted 97 years' from now, for the most conservative scenario. Under all other tidal scenarios and flood probabilities, there is no increase in flood risk.

Further analysis and the site survey of threshold levels in Frogmore Road shows that changes in flood levels to properties are within normal modelling tolerance ( /- 5cm) and do not increase the flood risk to any property during the design flood events (tidal 0.5% chance - including with an allowance climate change).

Overall the risk of fluvial flooding will be reduced compared to a 'do nothing' scenario.

Areas at risk of surface water flooding are predominantly within the fluvial floodplain of the River Otter or along the corridors of the smaller watercourses such as the Budleigh Brook and Kersbrook. There is an area of the site where an increase in tidal inundation of the floodplain could result in an increase in surface water flood risk due to surface water drainage systems being tide locked.

Consideration has also been given to the potential increase in surface water runoff due to additional areas of hardstanding at South Farm Road. The works to South Farm Road will result in a slight increase in impermeable area from approximately 3,300m<sup>2</sup> to approximately 3,500m<sup>2</sup>. Whilst this will result in a slight increase in surface water runoff, this will be draining to a tidal area and is therefore not expected to have an adverse impact on flood risk downstream or to the nearby Kersbrook.

There is also an existing historical surface water issue at the low-lying area of highway in Granary Lane. The assessment of surface water flood risk for outfalls from Granary Lane and the low-lying section of highway near No.2 Granary Lane, concluded that the proposed LORP scheme (and introduced tidal water) will not worsen the risk of flooding to receptors. Where existing outfall pipes have no form of non-return valve, these will be installed as part of the proposed LORP scheme. The existing trunk drain will remain and be connected to the new tidal creek system, where ebb tide flushing flows will help reduce silt build up at the pipe outlets.

The impact on groundwater levels has been adequately assessed, however further information will need to be provided to support the Groundwater Monitoring Strategy recommended in Table 10.10 of the Environmental Statement. This can be considered by way of a condition.

Without the implementation of the proposed LORP scheme, future climate change (sea level rise and increased storm frequency) is expected to increase the risk of uncontrolled breaching of the existing estuary embankment. If this were to occur, then the floodplain could immediately start to inundate with tidal water, putting many receptors and South Farm Road at high risk of flooding.

## **Biodiversity**

The Scheme will provide a number of key benefits in the long-term that will enhance or improve the area's biodiversity. However, there will also be some adverse construction effects. Key benefits include:

- The restoration of more natural environments, processes and enhanced habitats that will attract greater numbers and more varied wildlife.
- The restoration of the River Otter floodplain, reconnecting the river to its floodplain and reverting unnatural areas back to intertidal habitat, which, once established, will provide an increased habitat resource for overwintering birds, benthic estuarine invertebrates and intertidal, estuarine and migratory fish species in the Otter catchment.
- A more sustainable estuary system, operating more naturally, closer to its historic form before major human intervention took place. Fewer intrusive activities such as bank repairs, farming practices, etc, will take place, enabling the establishment of ecologically valuable habitats which will be used by a variety of species.
- The Scheme provides measures to maximise the benefit for wildlife of the restored habitats by ensuring that disturbance by human activity is minimised, for example by not constructing a visitor centre or larger car parks which would encourage visitors above the existing level.

A report for an appropriate assessment has been undertaken and is appended to the report; however the conclusion is that there would not be likely significant effects alone and/or in combination on features associated with the proposed scheme.

### **Trees and Landscaping**

It is proposed to remove large groups of existing trees/woodland, scattered trees and long lengths of hedgerow in the floodplain area, and cut to ground level some areas of trees/vegetation at the outer edges of the floodplain; to enable construction of scheme elements or to mitigate disturbance to protected species before future tidal inundation.

In order to mitigate this, it is further proposed to plant new trees and hedgerows to the north of the site, areas outside of the zone of tidal inundation and on the historic landfill site area. These will replace those lost by the scheme. There will be improvements to existing hedgerows and infilling of gaps. Areas of new vegetation will also be planted for screening purposes for the new habitat areas.

Areas of trees which are subject to tree preservation border the western part of the site; these will not be affected by the proposal.

### **Highways and Parking**

The scheme would require the complete relocation of South Farm Road. Currently the road crosses the floodplain and is a single track road with places to park. A number of informal laybys have been formed which allow motorists to park cars to visit the area. This continues on both sides of White Bridge. In some cases parking has encroached upon sensitive areas within the SSSI.

The proposal would remove this road and construct a new road to the South, which would include a new car park. The applicants have agreed to this providing at least 40 spaces, which would replace the existing informal parking, and 10 cycle spaces. Visitors would not therefore need to drive beyond this point, however there is still a need to construct a new road to provide access to residents and businesses at South Farm.

In addition, the applicant has agreed by way of a condition to construct a footpath from South Farm Road to its junction with Granary Lane, to allow access for those travelling by bus.

Access would be maintained to 1-3 South Farm Cottages by retaining a small spur off the existing road. Concerns have been raised regarding the visual impact of the proposed car park from the cottages. Although raised above the existing level, this would still be below the level of the cottages and situated some 40 metres distance, with the road, brook and existing highways separating the area from the front of the properties.

It is emphasised that the principal access to the site for visitors will be from Lime Kiln Car Park, which is much larger, and that whilst this will be an attractive area to visit

in the Summer, the peak season for visits from nature lovers is intended to be in the Winter, due to the presence of overwintering birds in the mud flats and saltmarsh.

Residents and Otterton Parish Council have expressed an interest in the provision of further car parking in their parish to remedy existing and proposed problems with parking. It is however considered that the proposed car park and footpaths provide adequate car parking for the development itself. This is subject to the provision of car parking spaces as specified by the highway authority, particularly given the emphasis on the Southern area being the most appealing to visitors.

## **Footpath**

It is proposed to make a number of changes to the footpaths through the site. This is because many of the footpaths flood and are not surfaced to be accessible for all. A new 70 metre span, 2.5 metre wide footbridge will be constructed at the Southern edge of the site, close to Lime Kiln Car Park, to enable accessible usage of the footpath to the east of the marsh. This will also include provision for some viewing areas.

Concerns have been raised by FAB Link (The France Alderney Britain power link project). This project involves the construction of a sub-sea connector with cables that come into the Country at Budleigh Salterton. The FAB project are concerned regarding the construction of footpath 12, due to the need to coordinate work programmes to accommodate the proposed cable. Permission has already been granted to FAB Link to raise the level of this footpath by between 300mm and 600mm, under planning application 17/1866/MFUL. Whilst raising is not included in the current proposal, it is intended to do this in conjunction with FAB Link, however further details will be required to achieve this.

## **Historic Environment**

Whilst there are no heritage assets within the area of the project, a number of listed buildings are close to the site and the impact on their setting needs to be considered. In particular, the proximity of culverts to Grade II listed Pullhayes Farm is referred to. This would have a less than substantial impact on the heritage asset, especially considering the buildings location in the centre of a number of other buildings which are not listed; however it is considered that the public benefits of this aspect of the proposal through reduced flooding outweighs this impact.

The Cottage is situated 20m to the West of the scheme, and it is considered that the scheme will make a small positive contribution to this heritage asset. The War memorial is situated above the site, 180m to the West. The Scheme forms part of the wider landscape setting of this asset and allows for an appreciation of its value through views from the west. As such, the Scheme is considered to make a small positive contribution to the asset's overall value as part of this wider landscape setting.

There are 46 listed buildings and a Conservation Area which are more than 200 metres from the scheme but still within the study area. However it is not considered that there will be any significant impact on these heritage assets from the scheme.

There are also a number of known archaeological sites within the area, and a Written Scheme of Investigation is required prior to development taking place.

### **Works during construction**

An outline Construction Management Plan (CMP) has been prepared in support of the Lower Otter Restoration Project planning application. The purpose of this CMP is to describe the anticipated environmental impacts associated with construction activities and to present proposals for management and mitigation of those impacts within the construction methodology. Particular attention is given to the management of impacts on neighbouring properties, sensitive users, biodiversity and the highway network.

A number of concerns have been raised regarding the future use of materials storage areas. The CMP states that once storage areas are no longer required they will be returned to their previous use. Concern has been raised about the proximity of construction vehicles to Otter Rise which is located adjacent to a proposed material storage area. The Environment Agency has stated that they are looking into the potential for revising the access route to this storage area.

It has also been noted that there are concerns about access to the east of White Bridge during construction of the new South Farm Road. During the estimated two-week closure of South Farm Road an alternative existing access route (from the rear of South Farm to Otterton village) will likely be agreed for the businesses and residential properties (see Appendix G of the Transport Statement). However, the diversion route is unlikely to be suitable for HGVs or large emergency service vehicles. A sequencing strategy for the new highway to existing tie in works will need to be developed. This will allow a staged approach, which limits actual closure to very brief periods overnight and with materials/plant ready as a contingency to rapidly and safely allow emergency services through the construction area if required. The exact details will be subject of a condition and developed further by the appointed contractor.

Residents of Granary Lane are also concerned about the potential for increased construction traffic to exacerbate existing issues along the road. The Transport Statement and CMP identify that there would be specific routes for construction (HGV) traffic on approach to the site along the B3178 (East Budleigh Road and Coastguard Road), South Farm Road and Salting Hill. Granary Lane would only be used for its short length between the B3178 East Budleigh Road and South Farm Road. Signs would need to be used to discourage other traffic associated with the scheme (for example commuting construction workers) from using Granary Lane

### **Other Concerns Raised**

#### The Consultation Process

Consultation has been ongoing since 2013 through the setting up of a stakeholder group. A public consultation took place in 2014 and a website set up shortly afterwards ([www.lowerotterrestorationproject.co.uk](http://www.lowerotterrestorationproject.co.uk)). This has been the main source of information since that date. Further stakeholder groups and a public consultation

was held in 2017. It was intended to undertake a further public consultation prior to submission, this was not possible due to COVID restrictions.

Further concerns were raised regarding the dates on the site notice erected to advertise the application. These gave an earlier date than the overall expiry date, which was later due to the need to advertise the application in the local newspaper, which has a later date because the initial advertisement did not refer to the application as EIA development. Whilst frustration at the differences in consultation dates is understandable, comments have been submitted and accepted since the date on the site notices expired and, given the number of comments received on the application, it is considered that the statutory requirements for publicity have been met.

### Erosion at Granary Lane

A number of residents of Granary Lane have raised concerns that the project will result in the erosion of the cliff base along Granary Lane. In 2015 a report was prepared by a consulting geologist to identify potential impacts from the project on these cliffs. It highlights that the cliffs were originally formed by meltwater torrents in a periglacial climate in the late Pleistocene and subsequently modified by wave action at a time when the estuary mouth was open and subject to the action of storm waves. The subsequent reduction and finally cessation of wave activity when the estuary became almost wholly blocked by shingle in medieval times left the cliffs abandoned. Erosion ceased when the estuary silted up and the cliff became protected by a salt marsh. With the proposed project in place the cliff will be protected by the public footpath on a raised bank. In the event that the footpath is overtopped by flood/tidal waters, it is unlikely to erode the foot of the cliffs as the water will be too confined to generate significant waves and water velocities in this area will be low.

### The Landfill Site

Surveys, including water and gas samples, have been taken from within and adjacent to the old landfill. In addition, trial pits have been excavated to establish the content, condition and stability of the tipped material. As part of the project part of the western section of the landfill will be removed. The sides of the remainder of the disused landfill will be protected by a combination of rock revetment, erosion protection matting and extended side slopes depending on the speed of flow in each area. It will also be covered with inert material. Overall, there would be a very low risk of contaminants being removed (through leaching or erosion) from the landfill. In the future with climate change, potentially a metre of sea level rise in the next 100 years, tide levels within the site will increase. With the project in place it is possible that the landfill may become inundated occasionally from the tide. However, due to the inert soil covering proposed, vegetation growth and the low flow speeds of the tide, the risk of contaminants being removed from the landfill will remain low.

### Salinisation

Concern has been expressed about the salinisation of groundwater, particularly the aquifer at Kersbrook. Much work has been done on the risk to groundwater, and this

has concluded that there is a low risk to South West Water's boreholes (especially the Kersbrook borehole). It is noted that SWW have not objected to the proposal.

### Agricultural Land

Approximately 48.8 ha of existing agricultural grazing pasture will be replaced with intertidal habitat. This is poor grazing land designated as Grade 4 within the land classification system, and therefore does not comprise Best and Most Versatile Land as stated in Policy EN13 of the Local Plan.

### Watersports

A number of concerns have been raised relating to the increased use of the estuary for water sports, which has particularly been evident over the last summer. There is a right of navigation on tidal waters with access only from the estuary, however there is no right of access from the land. As landowner and ongoing land manager, Clinton Devon Estates have stated that they do not intend to allow access to the new intertidal area from the land. The intention is not to encourage water sports and legal advice is currently being sought by the applicant to determine whether restrictions/bylaws may be put in place.

### Shingle bar

Concerns have also been raised that the shingle bar/spit at the mouth of the estuary will be washed away as a result of the project. Originally the estuary lacked the present day shingle bar and had a wider mouth (up to 500m) bounded by steep cliffs. The main estuary channel was canalised and large areas of the floodplain were embanked in 1810 - 1815. The resulting reduction in tidal prism (volume of tidal water able to flow in and out of the estuary) and flows through the estuary mouth supported the ongoing process of development of the shingle bar (see section above) and the shingle spit has grown to its present day extent. To maintain its present condition the spit requires continual maintenance. The preferred option at this location would be to see the lower estuary respond naturally to change and to move away from intervention. It is important to note that this area is part of the World Heritage Site and Otter Estuary SSSI.

The initial period following the main breach (around one year) is likely to see relatively high rates of erosion in the existing inner estuary channels and mouth due to the increased tidal prism and velocities. The channel widening and deepening will cause the shingle spit to shorten and may erode the landward face of the shingle barrier. The rear of the shingle bar (not an official public right of way) will need to be closed, however, the main footpath along the crest will remain unaffected.

### Mosquitoes

The type of habitat created under the project is generally unsuitable for invasive mosquito species, and experts from Public Health England (PHE) believe that increased health risks from this project associated with biting insects is low with careful design and management.

Research conducted at the site showed no current evidence of *Aedes detritus*, which is the common nuisance species associated with brackish habitat. *Anopheles claviger* was common and associated with the flooded grassland and freshwater ditches. This species isn't associated with nuisance biting. If the intertidal zone is regularly flooded and drained then suitability for mosquitoes will remain low. The key factor that will determine future mosquito pressure related to habitat changes is drainage. The project is therefore acting on information supplied by PHE and also the outputs from the Wetlands LIFE project to help guide detailed design, thus minimising the likelihood of increased risk from mosquitoes

## **CONCLUSION**

This is a significant application within the Lower Otter Valley which will result in a change to the existing landscape, which has been managed over the past two centuries. The ambition to return the river to a more natural watercourse will result in the inundation of water to the project area and will result in large areas of new habitat creation. In addition, significant rerouting of the existing South Farm Road is required, and there will be a requirement for additional car parking and a new footbridge to provide adequate facilities for those accessing the area by car, on foot or by bike.

The scheme is widely supported by a number of significant conservation bodies which have an interest in the site, this is a result of a number of years of consultation on the project including working groups.

The Flood Risk Assessment and modelling have fully considered the impact of the scheme on nearby residents and businesses, and have concluded that the risk is minimal.

Concerns have been raised regarding the positioning and size of the proposed car park which will be addressed by a planning condition, which will also include the requirement for a footpath from the proposed car park.

Impacts on trees, local landscape, the setting of heritage assets, use of the estuary and contamination have also been addressed.

It is considered that the proposal is acceptable subject to conditions set out below.

## **RECOMMENDATION**

**APPROVE** the appropriate assessment attached as **Appendix 1**

**APPROVE** the application subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved. (Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.

(Reason - For the avoidance of doubt.)

3. No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

(Reason: To ensure, in accordance with Policy EN6 (Nationally and Locally Important Archaeological Sites) of the East Devon Local Plan and paragraph 199 of the National Planning Policy Framework (2019), that an appropriate record is made of archaeological evidence that may be affected by the development)

4. Prior to the commencement of development, an access scheme shall be submitted to and approved in writing by the planning authority, in liaison with the Devon County Council Public Rights of Way Team. Such scheme shall include provision for the design of public rights of way routes including surfacing, widths, levels, gradients, landscaping, structures and any road crossing points.

(Reason: In the interests of the amenity and safety of the public in accordance with Policy TC4 (Footpaths, Bridleways and Cycleways) of the East Devon Local Plan 2013-2031)

5. No development affecting the public right of way shall commence until such time as a diversion order under section 257 and/or 247 of the Town & Country Planning Act 1990 (as amended) has been made and confirmed.

(Reason: In the interests of the amenity and safety of the public in accordance with Policy TC4 (Footpaths, Bridleways and Cycleways) of the East Devon Local Plan 2013-2031)

6. Samples of the materials for the proposed footbridge shall be submitted to and be approved in writing by the Local Planning Authority before the relevant parts of the work are commenced. The development shall be completed in accordance with the approved samples before the bridge is in use.

(Reason: In order that the external appearance of the bridge is satisfactory in accordance with Policy D1 - Design and Local Distinctiveness of the Adopted East Devon Local Plan 2013-2031.)

7. Unless otherwise agreed by the Local Planning Authority, development, other than that required to be carried out as part of an approved scheme of remediation, must not commence until conditions 1 to 4 below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the

unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 4 has been complied with in relation to that contamination.

### 1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

(i) a survey of the extent, scale and nature of contamination.

(ii) an assessment of the potential risks to:

Human health,  
Property (existing or proposed) including buildings, crops, livestock, pets,  
woodland and service lines and pipes,  
Adjoining land,  
Groundwaters and surface waters,  
Ecological systems,  
Archeological sites and ancient monuments.

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR 11.

### 2. Submission of Remediation Scheme

Where identified as necessary as a result of the findings of the investigation above, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared and submitted for approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

### 3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development (other than any part of the development required to carry out remediation), unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be

given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and will be subject to the approval in writing of the Local Planning Authority.

#### 4. Reporting of Unexpected Contamination

In the event that contamination is found at any time during the approved development works that was not previously identified, the findings must be reported in writing immediately to the Local Planning Authority. A new investigation and risk assessment must be undertaken in accordance with the requirements of condition 1 above and where remediation is necessary a new remediation scheme must be prepared in accordance with the requirements of condition 2. This must be subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 3.

#### 5. Long Term Monitoring and Maintenance

Where identified as necessary, a monitoring and maintenance scheme to include monitoring the longterm effectiveness of the proposed remediation over a period to be agreed with the LPA, and the provision of reports on the same must be prepared, both of which will be subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority.

This must be conducted in accordance with DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR 11.

(Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land, together with those to controlled waters, property and ecological systems, are minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN16 (Contaminated Land) of the East Devon Local Plan 2013-2031).

8. A Construction and Environment Management Plan must be submitted and approved by the Local Planning Authority prior to any works commencing on site, and shall be implemented and remain in place throughout the development. The CEMP shall include at least the following matters: Transport

routes and measures to control traffic impacts, location of building compounds and of construction worker parking, any road closures, wheel washing measures, air quality, dust, water quality, lighting, noise and vibration, pollution prevention and control, and monitoring arrangements. Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site. There shall be no high frequency audible reversing alarms used on the site.

(Reason: To protect the amenities of existing and future residents in the vicinity of the site from noise, air, water and light pollution in accordance with Policy EN14 (Control of Pollution) of the East Devon Local Plan 2013-2031).

9. No breaching of the banks approved by this permission shall take place until a monitoring and remediation/mitigation strategy to deal with the risks to groundwater associated with saline inundation of the site has been submitted to and approved, in writing, by the local planning authority. The strategy shall include the following components:
  - 1) A preliminary risk assessment which has identified a conceptual model of the site indicating sources, pathways and receptors, including those off site.
  - 2) A site investigation (including the area known as Little Marsh) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - 3) The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation/mitigation strategy giving full details of any measures identified as necessary and how they are to be undertaken.
  - 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation/mitigation strategy in (3) are complete and identifying a timeframe/timetable and any requirements for longer term monitoring of salinization linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.

(Reason: To ensure the protection of local groundwater resources in accordance with Policy EN21 (River and Coastal Flooding) of the East Devon Local Plan 2013-2031)

10. Prior to any works being carried out to South Farm Road detailed plans of the proposed car park and a timetable for the phasing of the works for the removal of the existing car parking spaces and the delivery of the new car park shall be submitted to and approved in writing by the Local Planning Authority. The details shall show a minimum of 40 car parking spaces and 10 cycle parking spaces with associated facilities. The South Farm Road Car Park shall be provided in accordance with the approved details and shall remain available for public use thereafter.

(Reason: In order to provide sufficient parking for the scheme in accordance with Policy TC2 (Accessibility of New Development) in the East Devon Local Plan 2013-2031)

11. A scheme shall be submitted to and approved in writing by the local planning authority which shows the provision of a footway from the proposed footpath entrance to the South Road Car Park on the eastern side of South Farm Road to connect with Granary Lane and East Budleigh Road. The footpath shall be constructed and relevant permissions sought from the Highway Authority prior to the use of the proposed car park.  
(Reason: To allow priority pedestrian and cycle movements, and to facilitating access to high quality public transport and appropriate facilities that encourage public transport use in accordance with Policy TC7 (Adequacy of Road Network and Site Access) of the East Devon Local Plan 2013-2031).
12. Development shall be carried out in accordance with the Arboricultural Method Statement submitted by Jacobs and dated September 2020. Provision shall be made for the supervision of the tree protection by a suitably qualified and experienced arboriculturalist and details shall be included for the keeping of a monitoring log to record site visits and inspections along with: the reasons for such visits; the findings of the inspection and any necessary actions; all variations or departures from the approved details and any resultant remedial action or mitigation measures. On completion of the development, the completed site monitoring log shall be signed off by the supervising arboriculturalist and submitted to the Planning Authority for approval and final discharge of the condition.  
(Reason - In the interests of amenity and to preserve and enhance the character and appearance of the area in accordance with Policies D1 - Design and Local Distinctiveness and D3 - Trees and Development Sites of the Adopted East Devon Local Plan 2013-2031.)
13. No trees, shrubs or hedges within the site which are shown as being planted or retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the Local Planning Authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within five years from the occupation of any building, or the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species unless the Local Planning Authority gives written consent to any variation.  
(Reason - In the interests of amenity and to preserve and enhance the character and appearance of the area in accordance with Policies D1 - Design and Local Distinctiveness and D3 - Trees and Development Sites of the Adopted East Devon Local Plan 2013-2031.)

## NOTE FOR APPLICANT

### Informative:

In accordance with the requirements of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 in determining this application, East Devon District Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved.

Please note that the grant of planning permission does not grant the right to close, alter or build over a right of way in any way, even temporarily, this includes, for example, a change in the surface, width or location. Nothing should be done to divert or stop up a public right of way without following the due legal process, including confirmation of any permanent diversion or stopping-up order and the provision of any new path. In order to avoid delays this should be considered at an early opportunity.

If a temporary closure is required during construction works, e.g. for safety reasons, the applicant would need to apply to the County Council for a Temporary Traffic Regulation Order.

The alignment, width, and condition of public rights of way providing for their safe and convenient use shall remain unaffected by the development unless otherwise agreed in writing by the Public Rights of Way Team.

Nothing in this decision notice shall be taken as granting consent for alterations to public rights of way without the due legal process being followed

### Plans relating to this application:

|                                    |                           |          |
|------------------------------------|---------------------------|----------|
| env statement :<br>app A - fig 1.1 | General<br>Correspondence | 28.09.20 |
| env statement :<br>app A - fig 1.2 | General<br>Correspondence | 28.09.20 |
| env statement :<br>app A : fig 1.3 | General<br>Correspondence | 28.09.20 |
| env statement :<br>app A : fig 1.4 | General<br>Correspondence | 28.09.20 |
| env statement :<br>app A : fig 1.5 | General<br>Correspondence | 28.09.20 |
| env statement :<br>app A : fig 1.6 | General<br>Correspondence | 28.09.20 |
| env statement :<br>app A : fig 1.7 | General<br>Correspondence | 28.09.20 |

|                                     |                            |          |
|-------------------------------------|----------------------------|----------|
| env statement :<br>app A : fig 1.8  | General<br>Correspondence  | 28.09.20 |
| env statement :<br>app A : fig 1.9  | General<br>Correspondence  | 28.09.20 |
| env statement :<br>app A : fig 1.10 | General<br>Correspondence  | 28.09.20 |
| env statement :<br>app A : fig 1.11 | General<br>Correspondence  | 28.09.20 |
| env statement :<br>app A : fig 1.14 | General<br>Correspondence  | 28.09.20 |
| env statement :<br>app A : fig 1.18 | General<br>Correspondence  | 28.09.20 |
| env statement :<br>app A : fig 1.19 | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig 1.20 | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig 1.21 | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig 1.22 | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig 1.23 | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig 1.24 | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig 1.25 | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig 1.26 | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig 1.27 | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig 1.28 | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig 1.29 | Environmental<br>Statement | 28.09.20 |

|   |                            |          |
|---|----------------------------|----------|
| env statement :<br>app A : fig 1.30         | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig 1.31         | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig 1.32         | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig 11.17        | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig<br>1.12+1.13 | Environmental<br>Statement | 28.09.20 |
| env statement :<br>app A : fig<br>1.15+1.16 | Environmental<br>Statement | 28.09.20 |
| DR-C-0001 P01                               | Other Plans                | 28.09.20 |
| DR-C-0002 P01                               | Other Plans                | 28.09.20 |
| DR-C-0003 P01                               | Other Plans                | 28.09.20 |
| DR-C-0004 P01                               | Other Plans                | 28.09.20 |
| DR-C-0005 P01                               | Other Plans                | 28.09.20 |
| DR-C-0006 P01                               | Other Plans                | 28.09.20 |
| DR-C-0007 P01                               | Other Plans                | 28.09.20 |
| DR-C-0008 P01                               | Other Plans                | 28.09.20 |
| DR-C-0009 P01                               | Other Plans                | 28.09.20 |
| DR-C-0020 P01                               | Other Plans                | 28.09.20 |
| DR-C-0021 P01                               | Sections                   | 28.09.20 |
| DR-C-0022 P01                               | Sections                   | 28.09.20 |
| DR-C-0023 P01                               | Sections                   | 28.09.20 |
| DR-C-0024 P01                               | Sections                   | 28.09.20 |
| DR-C-0026 P01                               | Sections                   | 28.09.20 |

|                |                    |          |
|----------------|--------------------|----------|
| DR-C-0027 P01  | Sections           | 28.09.20 |
| DR-EN-0050 P01 | Other Plans        | 28.09.20 |
| DR-EN-0051 P01 | Other Plans        | 28.09.20 |
| DR-EN-0052 P01 | Other Plans        | 28.09.20 |
| DR-EN-0053 P01 | Other Plans        | 28.09.20 |
| DR-EN-0054 P01 | Other Plans        | 28.09.20 |
| DR-EN-0055 P01 | Other Plans        | 28.09.20 |
| DR-L-0012 P01  | Other Plans        | 28.09.20 |
| DR-L-0013 P01  | Other Plans        | 28.09.20 |
| DR-L-0014 P01  | Other Plans        | 28.09.20 |
| DR-L-0015 P01  | Other Plans        | 28.09.20 |
| DR-L-0016 P01  | Other Plans        | 28.09.20 |
| DR-L-0017 P01  | Other Plans        | 28.09.20 |
| DR-L-0018 P01  | Other Plans        | 28.09.20 |
| DR-L-0019 P01  | Other Plans        | 28.09.20 |
| DR-LP-0001 P01 | Proposed Site Plan | 28.09.20 |
| DR-LP-0002 P01 | Proposed Site Plan | 28.09.20 |
| DR-LP-0003 P01 | Other Plans        | 28.09.20 |
| DR-LP-0005 P01 | Location Plan      | 28.09.20 |
| DR-LP-0006 P01 | Location Plan      | 28.09.20 |

List of Background Papers

Application file, consultations and policy documents referred to in the report.

|  |  |
|--|--|
| <b>Appropriate Assessment</b>  |  |
| <b>The Conservation of Habitats and Species Regulations 2017, Section (63)</b>   |  |
| Application Reference  | 20/2089/MFUL   |
| Brief description of proposal  | Proposed breach of the River Otter embankment, Little Bank and Big Bank to restore the historic floodplain creating intertidal saltmarsh, mudflats and freshwater habitat at Big Marsh, and new freshwater habitat at Little Marsh. Associated works including development of a new footbridge, realignment of South Farm Road, and creation of a new car park. (The Lower Otter Restoration Project).   |
| Location   | 151 Hectares Of Land Within The Parishes Of East Budleigh, Budleigh Salterton And Otterton From Lime Kiln Car Park (SY072819) To South Of Frogmore House (SY074850) (The Lower Otter Valley)   |
| Site is:   | <p>Within 10km of Dawlish Warren SAC and the Exe Estuary SPA site</p> <p>Within 10km of the Exe Estuary SPA site alone (UK9010081)</p> <p>Within 10km of the East Devon Heaths SPA (UK9010121)</p> <p>Within 10km of the East Devon Pebblebed Heaths SAC (UK0012602)</p> <p>Within 10km of the Exe Estuary Ramsar (UK 542)</p> <p>(See Appendix 1 for list of interest features of the SPA/SAC)</p>  |
| <b>Step 1<br/>Screening for Likely Significant Effect on the Lower Otter</b>   |  |
| <b>Risk Assessment</b>   |  |
| <p>Could the Qualifying Features of the European site be affected by the proposal?</p> <p>Consider both construction and operational stages.</p> | <p>Yes – the proposal is for ‘compensatory habitat’ for the loss of intertidal habitats within the Exe Estuary Special Protection Area (SPA) and Ramsar site. During the operational stage there is likely to be an increase in the interchange of birds between Exe and Otter estuaries. The new intertidal habitats will be recognised as SPA land and subsequently benefit from legal protection. However the habitats within the planning application boundary are not functionally linked to the Exe Estuary SPA.</p> <p>There is no link between the scheme and habitats on the East Devon Pebblebed Heaths.</p> |
| <b>Conclusion of Screening</b>   |  |

|  |  |   |
|--|--|---|
| <p>Is the proposal likely to have a significant effect, either 'alone' or 'in combination' on a European site?</p> | <p>East Devon District Council concludes that there <b>would not be</b> Likely Significant Effects 'alone' and/or 'in-combination' on features associated with the proposed scheme.</p> <p>See evidence documents on impact of development on SPA/SAC at: East Devon District Council - <a href="http://eastdevon.gov.uk/media/369997/exe-overarching-report-9th-june-2014.pdf">http://eastdevon.gov.uk/media/369997/exe-overarching-report-9th-june-2014.pdf</a></p> <p>An <b>Appropriate Assessment</b> of the plan or proposal <b>is not necessary</b>.</p> |   |
| <p>Local Authority Officer</p>   | <p>Darren Roberts</p>  | <p>Date: 4<sup>th</sup> December 2020</p> |
| <p>21 day consultation to be sent to Natural England Hub on completion of this form.</p>                           |  |   |

**Appendix 1. List of interest features:**

**Exe Estuary SPA**

**Annex 1 Species that are a primary reason for selection of this site (under the Birds Directive):**

Aggregation of non-breeding birds: Avocet *Recurvirostra avosetta*

Aggregation of non-breeding birds: Grey Plover *Pluvialis squatarola*

**Migratory species that are a primary reason for selection of this site**

Aggregation of non-breeding birds: Dunlin *Calidris alpina alpina*

Aggregation of non-breeding birds: Black-tailed Godwit *Limosa limosa islandica*

Aggregation of non-breeding birds: Brent Goose (dark-bellied) *Branta bernicla bernicla*

Wintering populations of Slavonian Grebe *Podiceps auritus*

Wintering populations of Oystercatcher *Haematopus ostralegus*

**Waterfowl Assemblage**

>20,000 waterfowl over winter

**Habitats which are not notified for their specific habitat interest (under the relevant designation), but because they support notified species.**

Sheltered muddy shores (including estuarine muds; intertidal boulder and cobble scars; and seagrass beds)

Saltmarsh NVC communities: SM6 *Spartina anglica* saltmarsh

**SPA Conservation Objectives**

With regard to the SPA and the individual species and/or assemblage of species for which the site has been classified (the 'Qualifying Features' listed below), and subject to natural change;

**Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;**

- The extent and distribution of the habitats of the qualifying features**
- The structure and function of the habitats of the qualifying features**
- The supporting processes on which the habitats of the qualifying features rely**
- The population of each of the qualifying features, and,**
- The distribution of the qualifying features within the site.**

**Dawlish Warren SAC**

**Annex I habitats that are a primary reason for selection of this site (under the Habitats Directive):**

Annex I habitat: Shifting dunes along the shoreline with *Ammophila arenaria* ('white dunes'). (Strandline, embryo and mobile dunes.)

SD1 *Rumex crispus-Glaucium flavum* shingle community  
SD2 *Cakile maritima-Honkenya peploides* strandline community  
SD6 *Ammophila arenaria* mobile dune community  
SD7 *Ammophila arenaria-Festuca rubra* semi-fixed dune community  
Annex I habitat: Fixed dunes with herbaceous vegetation ('grey dunes').  
SD8 *Festuca rubra-Galium verum* fixed dune grassland  
SD12 *Carex arenaria-Festuca ovina-Agrostis capillaris* dune grassland  
SD19 *Phleum arenarium-Arenaria serpyllifolia* dune annual community  
Annex I habitat: Humid dune slacks.  
SD15 *Salix repens-Calliargon cuspidatum* dune-slack community  
SD16 *Salix repens-Holcus lanatus* dune slack community  
SD17 *Potentilla anserina-Carex nigra* dune-slack community

**Habitats Directive Annex II species that are a primary reason for selection of this site:**

Petalwort (*Petalophyllum ralfsii*)

**SAC Conservation Objectives**

With regard to the SAC and the natural habitats and/or species for which the site has been designated (the 'Qualifying Features' listed below), and subject to natural change; Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- The extent and distribution of qualifying natural habitats and habitats of qualifying species
- The structure and function (including typical species) of qualifying natural habitats
- The structure and function of the habitats of qualifying species
- The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely
- The populations of qualifying species, and,
- The distribution of qualifying species within the site.

**List of interest features:**

**East Devon Heaths SPA:**

**A224 *Caprimulgus europaeus*; European nightjar (Breeding) 83 pairs (2.4% of GB population 1992)**

**A302 *Sylvia undata*; Dartford warbler (Breeding) 128 pairs (6.8% of GB Population in 1994)**

Objectives:

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and,
- The distribution of the qualifying features within the site.

**East Devon Pebblebed Heaths SAC:**

This is the largest block of lowland heathland in Devon. The site includes extensive areas of dry heath and wet heath associated with various other mire communities. The wet element occupies the lower-lying areas and includes good examples of cross-leaved heath – bog-moss (*Erica tetralix* – *Sphagnum compactum*) wet heath. The dry heaths are characterised by the presence of heather *Calluna vulgaris*, bell heather *Erica cinerea*, western gorse *Ulex gallii*, bristle bent *Agrostis curtisii*, purple moor-grass *Molinia caerulea*, cross-leaved heath *E. tetralix* and tormentil *Potentilla erecta*. The presence of plants such as cross-leaved heath illustrates the more oceanic

nature of these heathlands, as this species is typical of wet heath in the more continental parts of the UK. Populations of southern damselfly *Coenagrion mercuriale* occur in wet flushes within the site.

**Qualifying habitats:** The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I:

**H4010. Northern Atlantic wet heaths with *Erica tetralix*; Wet heathland with cross-leaved heath**  
**H4030. European dry heaths**

**Qualifying species:** The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following species listed in Annex II:

**S1044. *Coenagrion mercuriale*; Southern damselfly**

**Objectives:**

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- The extent and distribution of qualifying natural habitats and habitats of qualifying species
- The structure and function (including typical species) of qualifying natural habitats
- The structure and function of the habitats of qualifying species
- The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely
- The populations of qualifying species, and,
- The distribution of qualifying species within the site.

**Exe Estuary SPA**

**Qualifying Features:**

**A007 *Podiceps auritus*; Slavonian grebe (Non-breeding)**  
**A046a *Branta bernicla bernicla*; Dark-bellied brent goose (Non-breeding)**  
**A130 *Haematopus ostralegus*; Eurasian oystercatcher (Non-breeding)**  
**A132 *Recurvirostra avosetta*; Pied avocet (Non-breeding)**  
**A141 *Pluvialis squatarola*; Grey plover (Non-breeding)**  
**A149 *Calidris alpina alpina*; Dunlin (Non-breeding)**  
**A156 *Limosa limosa islandica*; Black-tailed godwit (Non-breeding)**  
**Waterbird assemblage**

**Objectives:**

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and,
- The distribution of the qualifying features within the site.

**Exe Estuary Ramsar**

**Principal Features (updated 1999)**

The estuary includes shallow offshore waters, extensive mud and sand flats, and limited areas of saltmarsh. The site boundary also embraces part of Exeter Canal; Exminster Marshes – a complex of marshes and damp pasture towards the head of the estuary; and Dawlish Warren - an extensive recurved sand-dune system which has developed across the mouth of the estuary.

Average peak counts of wintering water birds regularly exceed 20,000 individuals (23,268\*), including internationally important numbers\* of *Branta bernicla bernicla* (2,343). Species wintering in nationally important numbers\* include *Podiceps auritus*, *Haematopus ostralegus*, *Recurvirostra avosetta* (311), *Pluvialis squatarola*, *Calidris alpina* and *Limosa limosa* (594).

Because of its relatively mild climate and sheltered location, the site assumes even greater importance as a refuge during spells of severe weather. Nationally important numbers of *Charadrius hiaticula* and *Tringa nebularia* occur on passage. Parts of the site are managed as nature reserves by the Royal Society for the Protection of Birds and by the local authority. (1a,3a,3b,3c)