Annex A

Principles which will be used by Natural England in responding to consultations and providing advice on proposed jetties and slipways – *Supporting Information*

The purpose of these principles - Assessing the cumulative effects of small developments on the foreshore

Articles 6(3) and (4) of the Habitats Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect, either individually or in combination with other plans or projects, must be subject to "appropriate assessment" of its implications. In light of such an assessment, plans or projects may only be agreed after ascertaining that they will not adversely affect the integrity of the site.

The Conservation of Habitats and Species Regulations 2010 recently replaced The Conservation (Natural Habitats &c) Regulations 1994, and this translates the Habitats Directive and Birds Directive into law in Great Britain. It gives Natural England (previously English Nature) a statutory responsibility to advise relevant authorities as to the conservation objectives for European Marine Sites and operations which may cause deterioration of natural habitats or the habitats of species, or disturbance of species for which the sites have been designated. English Nature issued advice for the Poole Harbour European Marine Site in fulfilment of Regulation 33 (2) of the Conservation (Natural Habitats &c.) Regulations 1994 (English Nature, 2000) now to be referred to as Regulation 35 (2) of the The Conservation of Habitats and Species Regulations 2010.

The advice in the Regulation 33 advice is a material consideration that must be borne in mind when conducting an Appropriate Assessment. This document lists each of the interest features (birds) of the Poole Harbour SPA and the various sub-features (habitats) that support them. It also identifies four key attributes for which there are targets that must be met in order for those features and sub-features to be deemed to be in favourable condition. It is part of Natural England's duty to ensure that all features and sub-features of designated sites such as Poole Harbour remain, as far as possible, in favourable condition. The four key attributes and associated targets are summarised in the following table:

Attribute	Target
Disturbance in feeding, nesting and roosting areas	No significant reduction in numbers or displacement of wintering and breeding birds attributable to disturbance from an established baseline, subject to natural change

Absence of obstructions to view lines	No increase in obstructions to existing bird view lines
Extent and distribution of habitat	No decrease in extent from an established baseline, subject to natural change.
Food availability	Presence and abundance of prey species should not deviate significantly from an established baseline, subject to natural change

In the light of the above, the concern is that proposed small developments on the foreshore such as jetties would have the potential to damage the features of special interest of the site via the following potential impacts:

- Long term intermittent disturbance and displacement during jetty use in the winter months, causing the area of inter-tidal habitat to be unavailable to feeding waterfowl.

- Restriction of views of wintering birds for foraging and/or loafing. This may result in a reduction in the feeding efficiency of birds that use this stretch of the shoreline, or could potentially deter birds from utilising the area of shoreline affected.

- Disruption of flight-lines of wintering birds, potentially deterring or obstructing the use of traditional flight-lines.

- Reduction in total area of inter-tidal habitat within Poole Harbour SPA/SSSI.

- Direct or indirect change to the physical quality of habitat in a localised area; i.e. structure creating shading of inter-tidal habitat;

- Creating a potential increase in demand for future associated dredging.

There is a general principle of planning law which recognises that there may be circumstances in which to permit a development, even though it would cause no significant harm to protected interests in itself, is nevertheless harmful because it would make it difficult to refuse other similar projects, and a proliferation of such projects would, collectively, be harmful[1]

The 'in combination' provision is particularly relevant in the case of small developments on the foreshore since there is much potential for many similar 'jetty' proposals to have a cumulative effect on the SPA. The principles laid out in this document have been developed

[1] Collins Radio Ltd v SoSE (1975) 1 EGLR 146 (Ref 1); Poundstretcher Ltd v SoSE (1988) 3 PLR69 (Ref 2); Dibben Construction Ltd v SoSE (1991) JPL 260 (ref 3) and Rumsey v SoSE (2001) 81 P&CR 32 (page 465) (Ref 4)

to ascertain that the cumulative effect of these small developments will cause no significant harm to the protected interests of Poole Harbour Special Protection Area.

Developing the principles by which Natural England respond to consultations on small developments in Poole harbour

Donnelly et al. (2003) recognised that certain sectors of the shore of Poole Harbour are already heavily developed and disturbed by existing human activity and little used by birds. In such places the report recommended that "English Nature would not raise an objection to an application for a jetty and/or slipway development within this (policy) area on the grounds that additional disturbance or habitat loss would be unlikely to affect the integrity of the SPA". However in sectors of the shore that are moderately or little developed, little disturbed and well-used by birds the report recommended that "any proposal for a jetty and or slipway development within this (policy) area should be met with objection on the grounds that compensatory or mitigation measures, conditions or planning obligations would not adequately protect the integrity of the SPA, and that unacceptable, possibly irreversible damage to the SPA would be experienced, opposing the objectives set out in the Favourable Condition table as mentioned above".

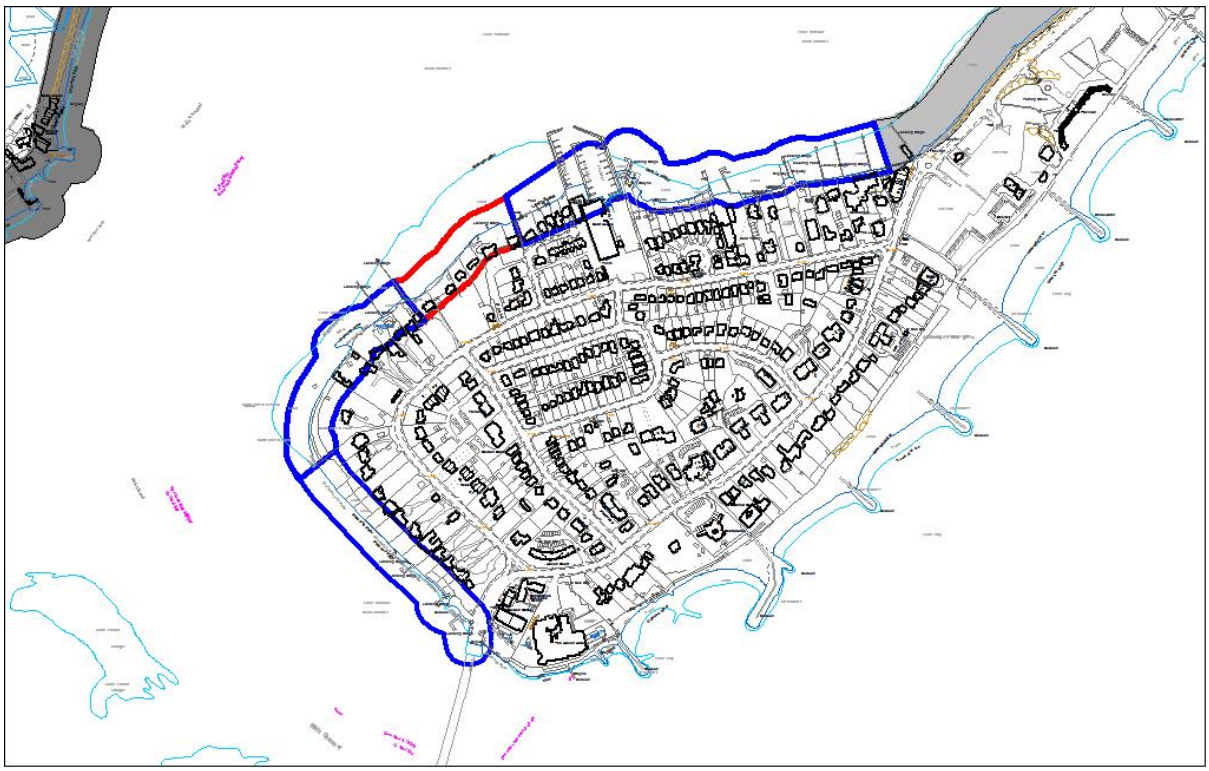
Donnelly et al (2003) suggested a three 'policy layer system' of either 'No objection providing 'a good practice guidelines' for design was adhered to' (Policy 1), 'No objection with conditions' (Policy 2) or Objection (Policy 3). Many of the conditions, however, suggested in the report for policy 2 would have been difficult or unfeasible to enforce in practice. For example the removal of existing structures and placing restrictions on the type of boat the jetty user used. Further survey work has also highlighted the relative importance of different parts of the northern shore of the Harbour (EPR, 2004; NECR017,2009). Natural England has as a result taken a strategic approach where the northern shore has been split into 'red' and 'blue' zones. The zonation is based on the **relative importance of the site to birds** and the existing **density of jetties** in order to ensure that the remaining open undeveloped areas of foreshore that are important for bird feeding and roosting are maintained**.**

The principles that have been developed are that further development may be permitted providing good practice guidelines are followed in areas of less importance to birds (ie where bird numbers and diversity is low and the density of jetties and slipways are already having an impact. (blue zones). Natural England will, however, object to further development in areas important to birds and where jetty development is still of a low density (red zones).

The scope of the area covered by these principles runs from the south east of Lytchett Bay in the west to Sandbanks in the east. The advice relates to **private** jetty, slipway and pontoon applications linked to **existing** residential developments. All other types of developments on the foreshore and outside of this area will be responded to on a case by case basis. Areas that were considered by Donnelly et al (2003) that are not linked to residential development have therefore been excluded from this document.

Different areas of foreshore are listed below outlining the reasoning as to why they are in the blue or red zone:

Sector S – Sandbanks

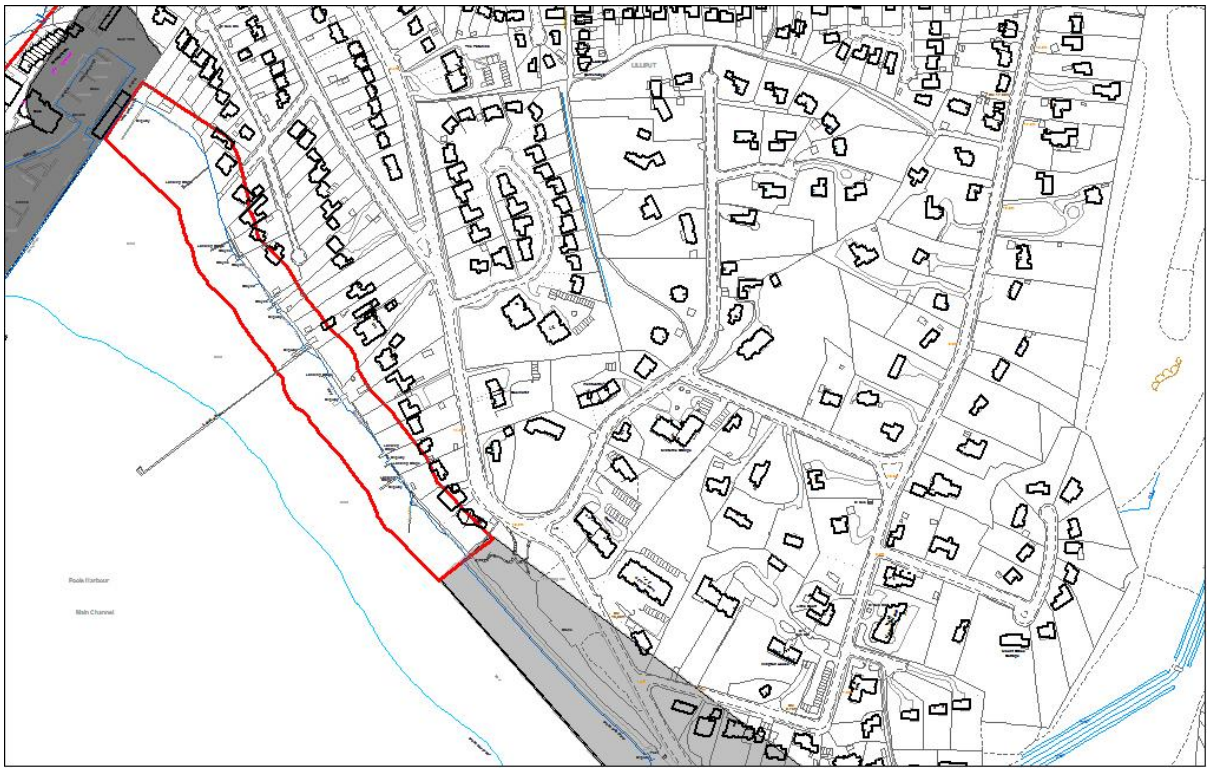


Donnelly et al (2003) recorded 11 species in this area, however the sector supported very low numbers of birds compared to other sectors.

S1	There is a moderate density of jetties and slipways and a relative low disturbance level here. Morrison (2002) observed the area was relatively low lying and that this in conjunction with wash from large boats, restricts the exposure of feeding areas available for birds. Donnelly (2003) recorded a low number of key species of waterfowl This has been designated a blue zone.
S2	There is a moderate density of jetties here. This sub sector is used by birds disturbed from Whitley Lake and in Donnelly et al (2003) it was recommended that the area of shoreline be maintained as a temporary refuge with the aim being to maintain the open area within the middle of the subsector. Donnelly et al (2003) advised removing structures longer than 10m from here but this is not a realistic measure. The red zone status here is to ensure no further development impacts on this important refuge area.

	This has been designated a red zone.
S3	This area includes yacht clubs, a marina and a boatyard, as well as a high density of jetties and slipways. There is a potentially high disturbance level and limited intertidal area for bird feeding (Donnelly et al (2003). Donnelly (2003) also recorded a low number of key species of waterfowl. This has been designated a blue zone.

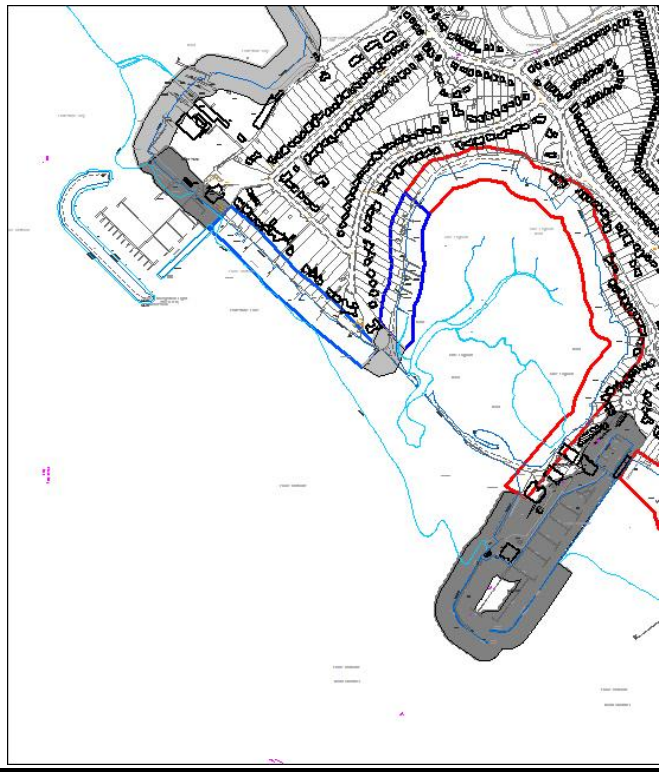
Sector L – Lilliput



L	There is a low density of jetty and slipway development here. This area is seen as a continuation of Whitley Lake an area of particular importance to birds and is likely to be a particular value when water sport activity disturbs birds at Whitley Lake (EPR 2004). Larger numbers of birds were recorded feeding here by Donnelly et al (2003) than at Sandbanks. Eight species, including most notably, Dark-bellied Brent Goose (4.3% total population of Poole Harbour) and Red-breasted Merganser (4.2% total population of Poole Harbour) were recorded. Swensson (2004) also recorded significant numbers of Red-breasted Merganser along with 5 other species. For part of this sector Donnelly et al (2003) advised limiting vessel types to

	small craft with small engines and restricting the use of the structures to summer only to prevent disturbance to wintering fowl. However these measures cannot realistically be enforced. This area has been designated as a red zone

Sector BL - Blue Lagoon/Parkstone

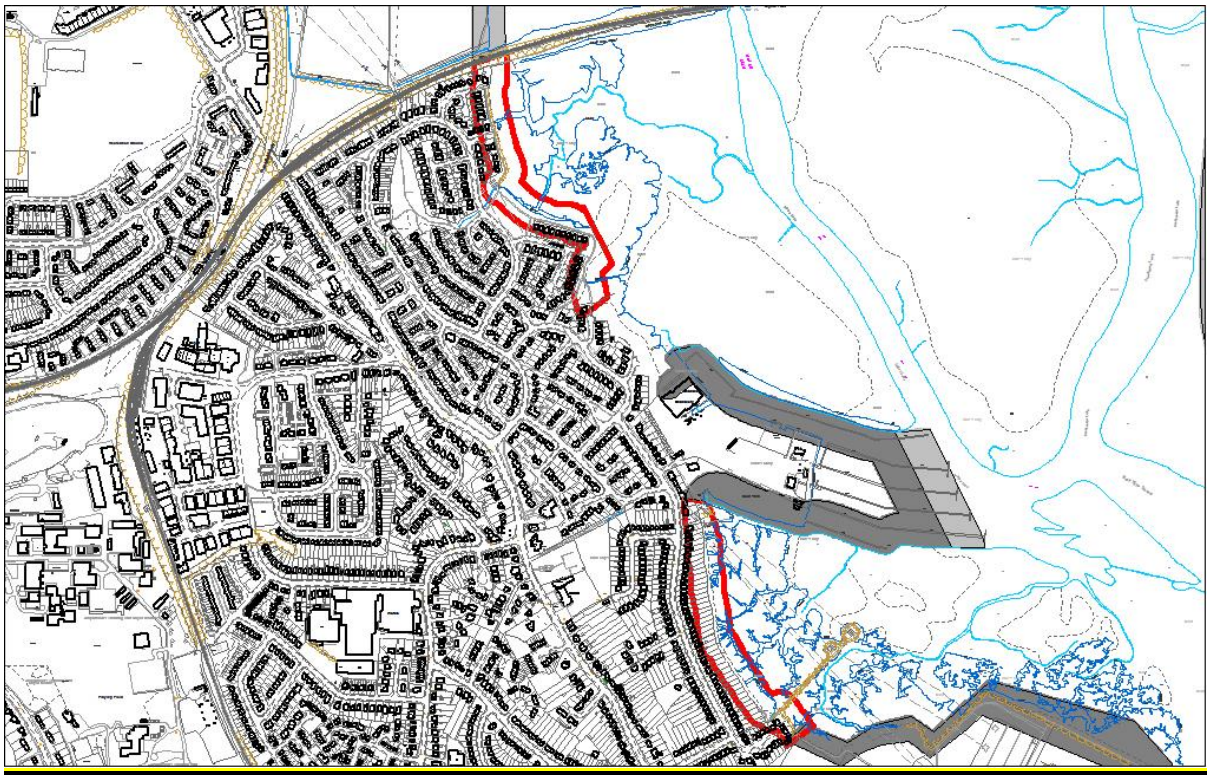


In the whole of sector BL, 5 species had numbers in excess of 1% total Harbour population: Dunlin (3.06%), Red-breasted Merganser (3.04%), Dark-bellied Brent Geese (2.08%), Redshank (1.70%) and Shelduck (1.53%) (Donnelly et al, 2003).

BL1	Blue Lagoon is one of the most important sites on the northern shore of Poole Harbour for wintering birds. The site is considered of high importance to key species of waterfowl for feeding and roosting, including within the upper beach area EPR, 2004; NECR017, 2009, Donnelly et al 2003). The highest number of birds in the upper beach area of the northern shore study area were recorded within the Lagoon during the Donnelly et al (2003) study while Blue lagoon (together with Holes Bay and part of Hamworthy shoreline) was also found to have the highest numbers of bird in a study of the northern shore both during day and night (NECR017, 2009). These areas are also the least disturbed and consist of large areas of soft mud for feeding. In addition to mudflat habitat saltmarsh and reeds also fringes Blue Lagoon. There are relatively low number of jetties around the Lagoon up to 25 Elms Avenue and Donnelly et al (2003) recorded low to moderate disturbance levels in the Lagoon This area has been designated as a red zone
BL2	This area has a high number of jetties while a lower number of birds were recorded here (Donnelly et al 2003. This has been designated a blue zone. Even so six species of bird were recorded where the jetties were less sparse (Donnelly et al 2003). In addition the shingle spit at the base of the lagoon and in close proximity to this site is important for roosting birds with 4% of the harbour oystercatcher population recorded roosting here (EPR, 2004). It is particularly important therefore that any new structures do not extend beyond the length of existing structures.
BL3	The area west of Blue Lagoon has a high density of existing structures on the foreshore and low disturbance. Donnelly et al 2003 concluded the area was of low to moderate importance to key species of waterfowl. At mid to high tide, there is little intertidal area for feeding and low numbers and species diversity were recorded. At low tide, number and species increased, but not significantly (Svennson, 2004).

	Morrison (2005) found a similar range of species but 'surprisingly higher numbers' compared to the previous two surveys. This area has been designated as a blue zone This site is still of value to birds particularly towards the entrance of Blue Lagoon. It is again particularly important therefore that any new structures do not extend beyond the length of existing structures.

Sector HB - Holes Bay



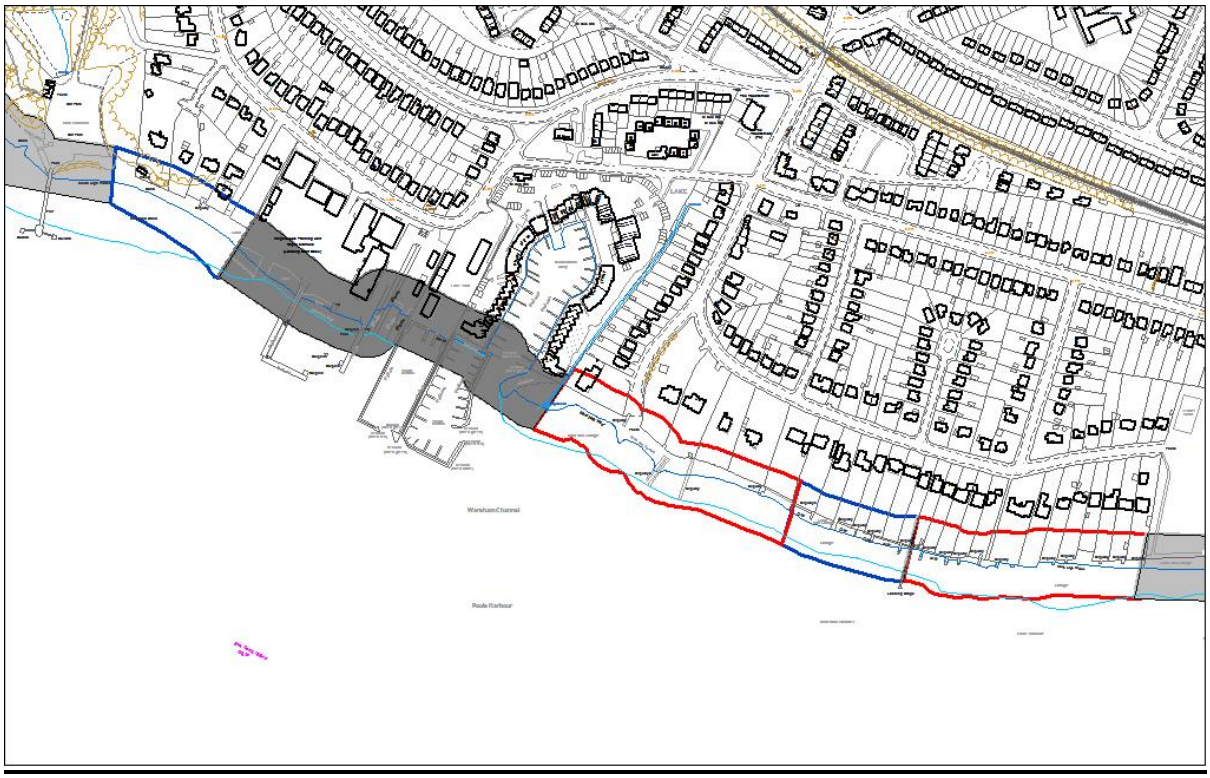
Holes Bay (together with Blue Lagoon) was found to hold the highest numbers of birds during a day and night survey of the northern shore. These areas are also the least disturbed and consist of large areas of soft mud for feeding (NECR, 2009).

Holes Bay is considered the most important area in the Harbour for Redshank (44% Poole Harbour population are found here at low water (Pickess & Underhill-Day, 2002). Substantial number of Dunlin occur here, as do Black-tailed Godwit, especially on spring passage.

The areas of Spartina marsh found here are often used as roosting and loafing sites. Holes Bay is also important during severe weather due to the sheltered position and shallow water (Collins 1985)

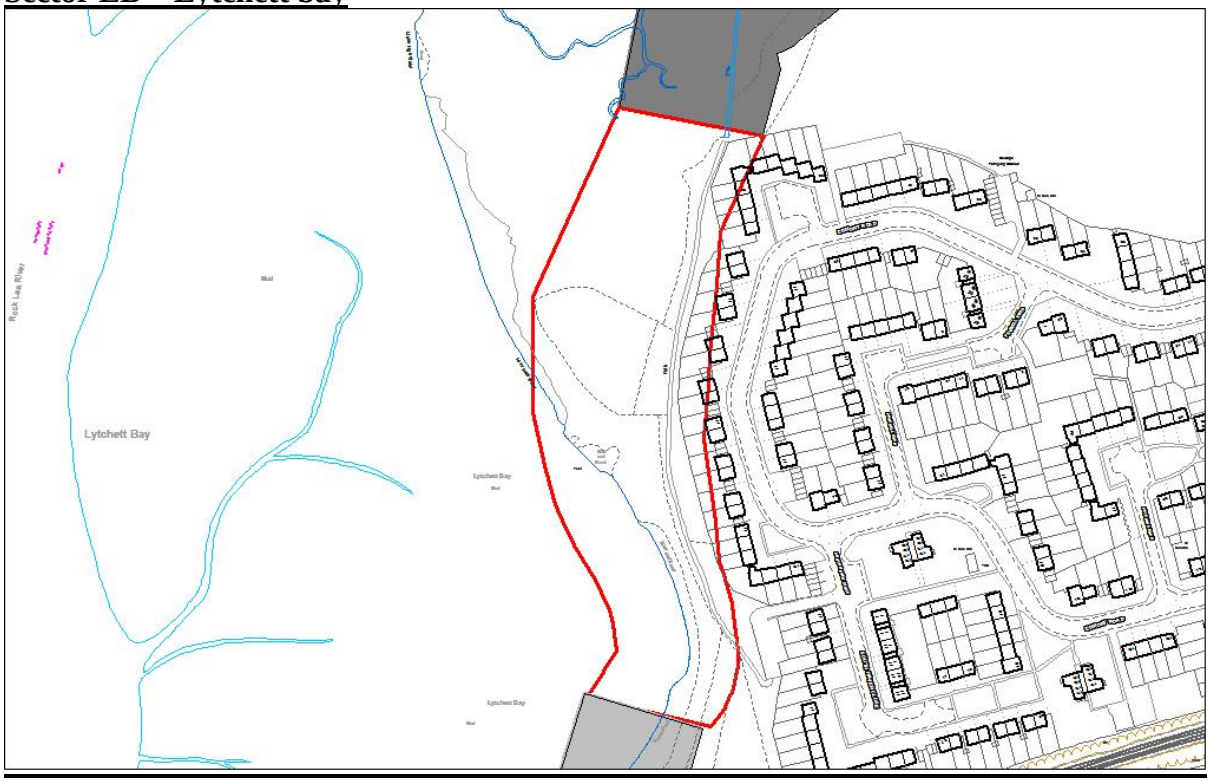
HB1	This area has a low density of jetties and slipways with a relatively low level of disturbance (Donnelly et al 2003). A variety of bird species roosting and feeding, notably Shelduck, Redshank & Dunlin were recorded here. • This area has been designated as a red zone
HB2	A low density of jetties and slipways with a low level of disturbance is found in this area. This subsector is of lower value than HB1 to waterfowl but relatively important sub sector for key species of waterfowl, most notably Shelduck (Donnelly et al, 2003) and Jonathan Cox Assoc. (2009)) • This area has been designated as a red zone

Sector H – Hamworthy



H1	This stretch of shore has a low density of existing jetty and slipway structures. Low numbers of birds were recorded here by Donnelly et al (2003) however in NECR017 (2009) more wader species were recorded in the Hamworthy area at night than during the day. The currently low density of jetties and potential value for the site mean it has been designated a red zone to preserve the current open area of shore here. This area has been designated a red zone
H2	There is a high density jetties and slipways with relatively low numbers of birds recorded here by Donnelly et al (2003) This area has been designated a blue zone
H3	This stretch of shore has a low density of existing jetty and slipway structures. Low numbers of birds were recorded here by Donnelly et al (2003) although in NECR017 (2009) more wader species were recorded in the Hamworthy area at night than during the day. This sector is noted by Donnelly et al (2003) as being important in terms of maintaining connectivity along the northern shore and the integrity of the SPA. This is due to the potential importance of this area to waterfowl by offering mainly unobstructed flight and sightlines along a stretch of shore that otherwise has a relatively high number of jetties and slipways. This area has been designated a red zone
H4	There is a high density jetties and slipways with relatively low numbers of birds recorded here by Donnelly et al (2003) This area has been designated a blue zone

Sector LB – Lytchett bay



LB	A low density of jetties and slipways and relatively low potential for disturbance was recorded here. The area is considered an important feeding area for Redshank while areas of *Spartina* are used as roost sites by Redshank and Curlew. Eleven species of waterfowl were recorded within the sector Donnelly et al. (2003). The spit located in the SE part of the bay is used as a roost site for Redshank, Dunlin and Oystercatcher. The fourth highest number of birds was recorded here in Donnelly et al (2003) survey. • This area has been designated as a red zone