

Shadow Habitats Regulations Assessment



Pontfaen Road, Lampeter

15th November 2021



**Tyler
Grange**

TG Report No. 13550_R03b_LT_CW

Report No:	Date	Revision	Author	Checked
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Appendix 1: Memorandum report – NRW. Dated 13th July 2021.



Summary

- S.1. This shadow Habitats Regulations Assessment (sHRA) has been prepared by Tyler Grange Group Ltd on behalf of Aldi Stores Limited and University of Wales Trinity Saint David with respect to a parcel of land off Pontfaen Road, Lampeter, SA48 7JL, (OS Grid Reference SN 57320 48156) hereafter referred to as 'the site'.
- S.2. Aldi Stores Limited and University of Wales Trinity Saint David have submitted planning application for the erection of a Class A1 retail Aldi foodstore, the refurbishment of a Grade II listed sports pavilion, the installation of three pre-fabricated wooden exhibition pods, and a nature and biodiversity area with associated access, car parking and landscaping to Ceredigion County Council. The application also includes Listed Building Consent involved with the refurbishment of the listed pavilion.
- S.3. This report examines any likely significant effects (LSE) of the proposed development on designated European / Ramsar sites, either alone or in combination with other plans and projects. Where an LSE exists this report then sets out information required to inform an Appropriate Assessment, which will be carried out by the competent authority, Ceredigion Council.
- S.4. The site is not covered by or adjacent to any statutorily or non-statutorily designated sites, although a number of such sites are present within the potential Zone of Influence of the development. This includes the River Teifi Special Area of Conservation (SAC) which is connected to the site by a watercourse which is located adjacent to the western boundary of the site.
- S.5. NRW has recently published evidence outlining the increased phosphate levels for several river SACs across Wales, including the River Teifi SAC. It concluded that all proposed developments must be assessed for the potential to cause an LSE as a result of increased phosphate discharge into the Teifi catchment.
- S.6. Pre-app advice from the Council confirms that the phosphate levels of the development are the only LSE required to be assessed under this sHRA.
- S.7. Focussing on this LSE, the HRA screening within this report concluded that there are no pathways for a potential LSE on the River Teifi SAC as a result of the development.



Section 1: Introduction

- 1.1. This shadow Habitats Regulations Assessment (sHRA) has been prepared by Tyler Grange Group Ltd on behalf of Aldi Stores Limited and University of Wales Trinity Saint David with respect to a parcel of land off Pontfaen Road, Lampeter, SA48 7JL, (OS Grid Reference SN 57320 48156) hereafter referred to as 'the site'.
- 1.2. A planning application for a new ALDI store along with associated access, parking and landscaping is to be submitted to Ceredigion County Council. In addition, the university are to submit proposals to include the renovation of the pavilion and construction of exhibition pods along with an improved multi-purpose grassed pitch and community recreation space with SuDS.
- 1.3. An 'extended' Phase I Habitat survey and Ecological Assessment (Ref: 13550_R01a) were undertaken by Tyler Grange in October 2021.

Site Description

- 1.4. The site forms part of a college playing field located to the south of Pontfaen Road. Residential housing, commercial properties and hardstanding lie to the north and east, a leisure centre with amenity grassland to the south and a wooded stream and arable fields to the west. Further afield the habitats comprise of residential areas, the town of Lampeter and farmland.

Context

- 1.5. In January 2021, Natural Resources Wales (NRW) published evidence outlining the increased phosphate levels for several river Special Areas of Conservation (SAC) across Wales¹, including the River Teifi SAC which is connected to the site by a watercourse adjacent to the western boundary of the site. The same publication reported "*widespread phosphorus breaches within the Welsh rivers with over 60% of waterbodies failing against the challenging targets set*".
- 1.6. A memorandum report from NRW to CCC dated 13th July 2021 (see **Appendix 1**) outlines that, as the 'competent Authority under the Habitats Regulations²', CCC is require to "*assess the potential impacts of projects on internationally important sites which include the Teifi SAC*".
- 1.7. Due to the recent nature of the issues, a Habitats Regulations Assessment (HRA) of the current Local Development Plan regarding phosphate levels has not been produced. In addition, the period for the current Local Development Plan for Ceredigion ends in 2022 therefore a replacement is being drafted (LDP2). However, the replacement plan is currently on hold, initially on the advice of the Welsh government throughout Covid-19 and now in order to resolve the recently introduced phosphate issue.

¹ <https://naturalresources.wales/about-us/news-and-events/news/tighter-phosphate-targets-change-our-view-of-the-state-of-welsh-rivers/?lang=en>

² The Habitats Regulations define a 'competent authority' as including any Minister of the Crown, government department, statutory Undertaker, public body of any description or persons holding public office; the Welsh Ministers; and any person exercising any function of those persons (regulation 7(1)).



- 1.8. An HRA has been produced for the LDP2 in 2019³, however as the policies had not yet been written and the phosphates issue not raised at this time, little is mentioned in this regard.
- 1.9. Therefore, there is currently very little information regarding the phosphates issue and how it should be addressed. The current advice from CCC is that all developments should be screened to determine whether they are likely so have a significant effect within the SAC⁴.

Purpose

- 1.10. This report provides information to inform CCC's (as 'competent authority') HRA of the proposed development in accordance with requirements of the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- 1.11. The assessment is informed by survey data and biological records purchased from the local record centre, as well as other freely available data.

³ <http://www.ceredigion.gov.uk/media/6158/habitat-regulations-assessment-screening-report-2019-eng.pdf>

⁴ <https://naturalresources.wales/guidance-and-advice/business-sectors/planning-and-development/our-role-in-planning-and-development/advice-to-planning-authorities-for-planning-applications-affecting-phosphorus-sensitive-river-special-areas-of-conservation/?lang=en>



Section 2: Legislation

- 2.1 Specific habitat, species and European sites receive legal protection in the UK under various pieces of legislation, including the Habitats Regulations⁵.
- 2.2 European sites under the Habitats Regulations comprise:
- Special Areas of Conservation (SAC) and candidate SAC (cSAC) designated under the Habitats Directive;
 - Special Protection Areas (SPA) classified under the Birds Directive; and
 - European Marine Sites (EMS).
- 2.3 Ramsar sites, designated under the Convention on Wetlands of International Importance, are given equivalent protection under national planning policy⁵.
- 2.4 Under the Habitats Regulations, a competent authority is required to consider, through an appropriate assessment, any potential impact of a plan/project which is likely to have a significant effect on any European designated site, whether alone or in combination with other plans/projects. The assessment of the potential effects is, as a whole, termed a Habitats Regulations Assessment (HRA), which is split into four stages, as described below:
- Stage 1 is a screening stage to determine if the development is likely to have a likely significant effect (LSE) on any European site, either alone or in combination with other plans or projects;
 - Where there is an LSE via any potential impact pathway, a full Appropriate Assessment is required, Stage 2. The AA determines whether it can be concluded that the project (either alone or in combination with other plans or projects) will not adversely affect the integrity of any European site(s), in view of its / their conservation objectives. Conservation objectives specify the overall target for a European site's designated qualifying features (habitats and species / populations listed in Annex I and II) in order for that feature to be maintained or restored, to reach favourable conservation status;
 - Stage 3 is triggered if significant adverse effects (alone or in combination) cannot be discounted in Stage 2. This stage requires alternative solutions to be examined to avoid significant impacts on European sites; and
 - If it is deemed that there is no alternative solution and that the project should nevertheless proceed for Imperative Reasons of Overriding Public Interest (IROPI), Stage 4 comprises an assessment of any necessary compensatory measures to be secured so as to ensure that the overall coherence of the network of European sites is protected.
- 2.5 The responsibility for undertaking the HRA lies with the competent authority who is responsible for granting consent for the scheme – in the case of the planning application here, this will be CCC. However, it is the applicant's obligation to provide such information to the competent authority as the competent authority may reasonably require for the purpose of the screening assessment or to enable it to determine whether an appropriate assessment is required. The information provided in this document will assist in this process.

⁵ <https://jnccc.gov.uk/our-work/ramsar-convention/>



2.6 Under the Habitats Regulations, the competent authority also has an obligation to consult with the statutory nature conservation organisation in relation to an appropriate assessment - in this case that organisation is NRW.



Section 3: Habitats Regulations Assessment Screening (Stage 1)

Approach to HRA Screening

- 3.1. The scope of the assessment in this case has been determined by undertaking a desk-based assessment, together with consultation with the following organisations and resources:
- The Conservation of Habitats and Species Regulations 2017 (the 'Habitat Regulations');
 - Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)⁶;
 - West Wales Biodiversity Information Centre (WWBIC);
 - Joint Nature Conservation Committee (www.jncc.org.uk) for citations of internationally designated sites;
 - Multi-Agency Geographic Information for the Countryside (MAGIC) Interactive Maps⁷ for locations of statutory sites;
 - Natural England (<https://naturalengland.gov.uk>) for citations of nationally designated sites; and
 - Ceredigion Council (<https://www.ceredigion.gov.uk>) for details of relevant local planning policies.

Stage 1: Assessment of Likely Significant Effects

- 3.2. The aim of this HRA Screening report is to establish whether the refurbishment of a Grade II listed sports pavilion, the installation of three pre-fabricated wooden exhibition pods, and a nature and biodiversity area with associated access, car parking and landscaping at the site is likely to have a LSE on any European site, either alone or in combination with any other plans and projects, during construction or operational phases.
- 3.3. In this Stage 1, the following information is required:
- Identification of European / Ramsar sites within the area;
 - Identification / understanding of the conservation objectives of each interest / qualifying feature of each European / Ramsar site; and
 - Identification of whether any element of the development is likely to have a significant effect on any interest feature of any European site, either alone or in combination with other projects/plans.
- 3.4. The CJEU in the recent (April 2018) case of *People Over Wind, Peter Sweetman v Coillte Teoranta (C 323/17)* ruled that "in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site" (see paragraph 40).

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992L0043&from=EN> [accessed 14/06/2021].

⁷ www.natureonthemap.naturalengland.org.uk/MagicMap.aspx [accessed 14/06/2021].



Hence it is not acceptable for the Stage 1 screening assessment to rely on avoidance or reduction (mitigation) measures.

- 3.5. Where a project is reliant on avoidance or reduction measures so as to remove the risk of likely significant effects on any European site, these measures must be ignored for the screening stage and it must be assumed that the project is “likely to have a significant effect on a European site”. This then triggers a requirement for an “Appropriate Assessment (AA)”. At the AA stage, mitigation (avoidance or reduction) measures may be taken into account. The project may only then proceed if, following the AA and taking into account those mitigation measures, the competent authority concludes that the project will give rise to no adverse effect on the integrity of any European site, alone or in combination with any other plan or project.

European Sites

- 3.6. The proposed development site is not covered by, or adjacent to, any European/Ramsar site. However, the River Teifi SAC lies approximately 0.65km to the southeast of the site and is connected to the site via the Nant Creuddyn stream adjacent to the western boundary of the site.
- 3.7. The River Teifi SAC is designated for the presence of an Annex I habitat of ‘water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation’.
- 3.8. The River Teifi Management Plan⁸ describes the conservation objectives for the water course itself and nine other features within the Teifi SAC, each with several conditions that must be met in order for each feature to be in a favourable conservation status (refer to Management Plan itself for full details). Table 1 below lists the features for which conservation objectives exist.

Table 1: A summary of the features for which conservation objectives exist

Feature Number	Feature description
1	Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation (EU Habitat Code: 3260)
2 - 6	Brook lamprey <i>Lampetra planeri</i> (EU Species Code:1096); River lamprey <i>Lampetra fluviatilis</i> (EU Species Code:1099); Sea lamprey <i>Petromyzon marinus</i> (EU Species Code:1095); Atlantic salmon <i>Salmo salar</i> (EU Species Code:1106); Bullhead <i>Cottus gobio</i> (EU Species Code:1163)
7	European otter <i>Lutra lutra</i>
8	Floating water-plantain <i>Luronium natans</i> (EU Species Code: 1831)
9	Oligotrophic to mesotrophic standing waters with vegetation of the <i>Littorelletea uniflorae</i> and/or of the <i>Isoëto-Nanojuncetea</i> (EU Habitat Code:3130)

- 3.9. **Figure 1** shows the European sites within a 10km radius of the site and indicates the proximity of the River Teifi SAC to the site.

⁸ <https://naturalresources.wales/media/682845/afon-teifi-river-teifi-management-plan.pdf>



Figure 1: Map showing European sites within a 10km radius of the site in relation to the site location.

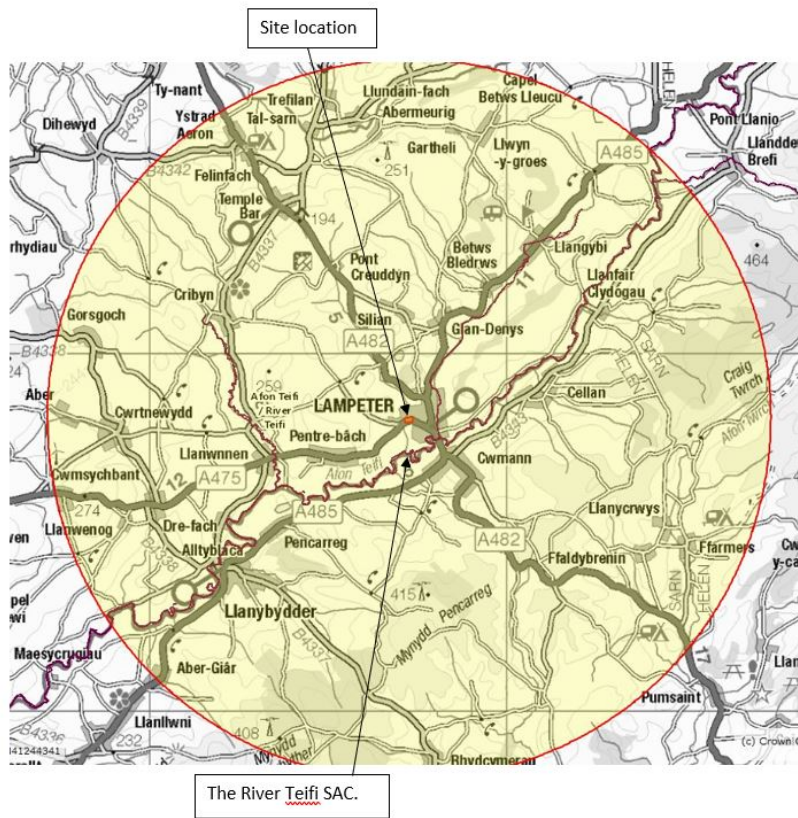
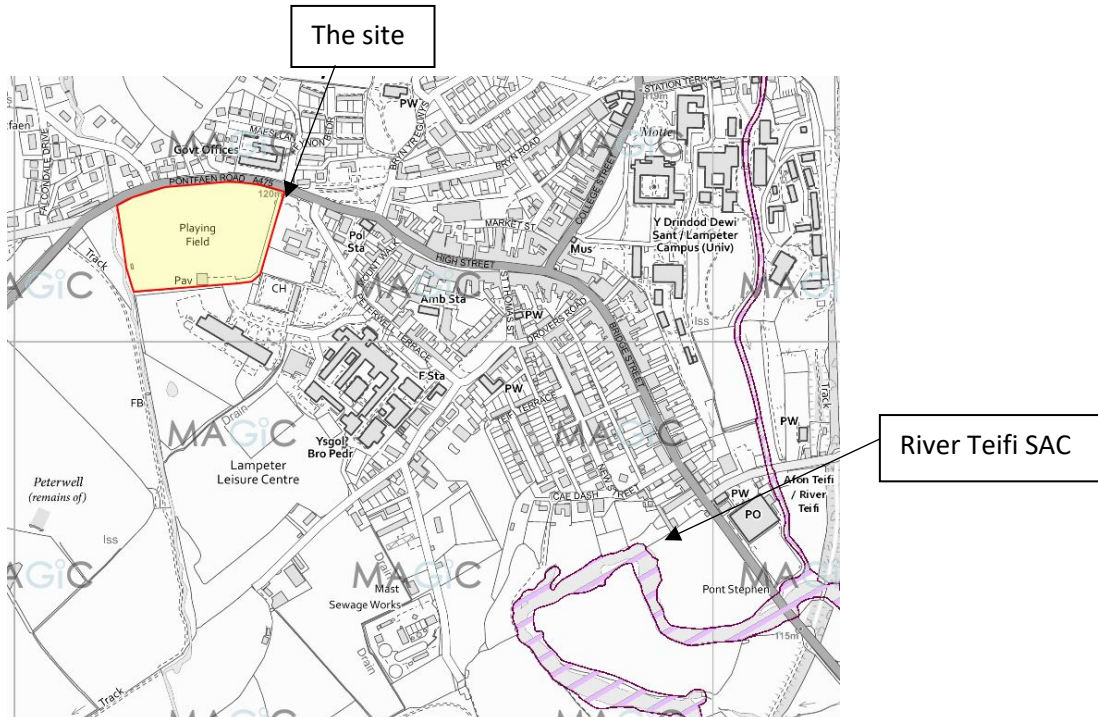


Figure 2: Map showing proximity of the River Teifi SAC to the site



Initial Scoping

- 3.10. In the Memorandum report (see **Appendix 1**), NRW state that the types of development impacted by the requirement described in Section 1 are as follows:
- *"New residential units - including tourist accommodation, gypsy & traveller sites /pitches, student accommodation, care homes etc;*
 - *Commercial developments - new commercial floor space including extensions to existing, change of use from one business to another where there is an increase in employees and/or to a use that would impact on wastewater;*
 - *Agricultural Development - additional barns, slurry stores etc;*
 - *Prior Notifications of agricultural development where, as a result of the development, the amount or concentrations of wastewater discharge is increased;*
 - *Anaerobic Digesters;*
 - *Tourism attractions; and*
 - *Permitted development to an existing property (e.g. extensions) that increases the volume of foul drainage (e.g. as a result of increased occupancy)."*
- 3.11. This is not an exhaustive list however and each development must be assessed individually.
- 3.12. The Aldi store will fall under the 'commercial developments' element, whilst the renovation of the pavilion and construction of the exhibition pods will likely fall under the 'tourism attractions' element. As such, a screening exercise is necessary to determine whether a LSE will occur as a result of the development.
- 3.13. The potential pathways for which an LSE could occur on the River Teifi SAC are:
- Increased foul water and discharge to the sewage treatment works. This could result in increased phosphates being deposited within the catchment area as sewage treatments works don't strip out all of the phosphates in discharges that enter the watercourse;
 - Fertilisation of the sports pitches. Fertilisation could result in increased phosphates in the catchment through surface run-off into the adjacent stream.
- 3.14. Whilst the proposals will result in an overall increase in foul water discharge from the site through the new toilets within the Aldi store, it is anticipated that the majority of people using these toilets will be local residents already living within the catchment area of the River Teifi.
- 3.15. The pavilion and changing rooms have existing toilets which are also connected to the existing foul mains sewer and again, will be mainly used by local residents from within the catchment area.
- 3.16. As such, it is considered that there will be no net increase in foul water as the population within the catchment is not increasing. It is therefore considered that the proposed development will not result in an increase in phosphate discharge into the River Teifi catchment and therefore will not result in an LSE on the River Teifi SAC, either alone or in combination with other projects.



Section 4: Conclusions

- 4.1 The HRA screening exercise has screened out the potential for LSEs on the River Teifi SAC as a result of the development proposals.
- 4.2 It can therefore be concluded that the proposed development will not adversely affect the conservation objectives or the integrity of any European sites either alone or in combination with any other plans or projects.



Appendix 1: Memorandum Report - NRW



CEREDIGION COUNTY COUNCIL

Report to: Cabinet

Date of meeting: 13th July 2021

Title: Phosphates on the River Teifi Special Area of Conservation

Purpose of the report: To update Cabinet in relation to Phosphates within the River Teifi Special Area of Conservation (SAC), and to seek Delegated Powers to determine Planning Applications that would adversely affect the integrity of the SAC

For: Decision

Cabinet Portfolio and Cabinet Member: Cllr Rhodri Evans, Economy and Regeneration

The Council is committed to development only taking place if it is sustainable development that includes relevant environmental protections.

The quality of the natural environment in our area is of a particularly high standard. The Teifi River is a Special Area of Conservation. Within this area various locations are of national and international significance for wildlife. Thus the Teifi River is designated as a Special Area of Conservation (SAC) under the Conservation of Habitats & Species Regulations 2017, as amended ("The Habitat Regulations").

The Local Planning Authority (LPA) recently received a letter from Natural Resources Wales (NRW) about the high levels of phosphates in the Teifi. The same letter has also been sent to the other Local Planning Authorities in Wales in relation to the Teifi as well as other SAC water bodies.

In light of a court Judgement (known as "The Dutch Case"), NRW have advised Ceredigion County Council that, in light of the unfavourable condition of the Teifi SAC, before determining a planning application that may give rise to additional phosphates within the catchment, competent authorities should undertake a Habitats Regulations Assessment (HRA).

Ceredigion County Council is a 'competent authority' under the Habitats Regulations, and thus means the council is legally required to assess the potential impacts of projects and plans, on internationally important sites which include the Teifi SAC. In its role as competent authority, the council must carry out a 'Habitat Regulations Assessment' on any relevant planning application that falls within the boundary and catchment areas. Where there is a 'Likely Significant Effect', the council must carry out an 'Appropriate Assessment' in order to determine, with scientific certainty, that there would be no 'Adverse Effect on Integrity' on the designated site from the plan or project, either alone or in combination with other plans and projects.

The council takes this into account when considering whether planning permission can be granted. If it cannot be proven that there would not be an adverse effect on integrity, then planning permission cannot be granted without further stringent

consideration under the Habitats Regulations. NRW is a statutory consultee on appropriate assessments and provides advice to competent authorities in relation to sites designated such as SACs. Local Planning Authorities must have regard to the advice given by NRW when making planning decisions (for both individual developments and local development plans (LDP)).

The types of development impacted by this requirement include (but are not limited to):

- New residential units - including tourist accommodation, gypsy & traveller sites /pitches, student accommodation, care homes etc.
- Commercial developments - new commercial floor space including extensions to existing, change of use from one business to another where there is an increase in employees and/or to a use that would impact on wastewater.
- Agricultural Development - additional barns, slurry stores etc.
- Prior Notifications of agricultural development where, as a result of the development, the amount or concentrations of wastewater discharge is increased.
- Anaerobic Digesters
- Tourism attractions
- Permitted development to an existing property (e.g. extensions) that increases the volume of foul drainage (e.g. as a result of increased occupancy).

Further advice from NRW (02/05/21) suggests that Private Sewage Treatment plants discharging domestic wastewater to ground built to the relevant British Standard should be designed so that;

- The drainage field is located more than 40m from any surface water feature such as a river, stream, ditch or drain, **and**
- The drainage field is located more than 50m from the SAC boundary, **and**
- The maximum daily discharge rate is less than 2 cubic metres
- Also, to ensure that there is no significant in combination effect, the discharge to ground should be at least 200m from any other discharge to ground. The density of discharges to ground should also not be greater than 1 for every 4 hectares (or 25 per km²)

The other issue that has been raised, and the LPA are awaiting clarification is the necessity to de-sludge private sewage treatment plants (STW), waste carriers are legally obliged to discharge the sludge at Welsh Water sewage treatment works, however there are no STW's within Ceredigion that have the necessary phosphate stripping facilities, apart from Llanddewi Brefi which provisionally only has remaining capacity for up to 5 units, therefore discharge to Welsh Water STW's contributes to the damaging effects of phosphates in the river Teifi SAC.

Current situation (25/05/21)

The LPA currently have 45 applications that cannot be determined due to the above issue, of the 45 applications they consist of 47 dwellings, and 22 other uses, consequently the applications need to be refused, however the CLO Economy and Regeneration does not currently have delegated powers to refuse, and furthermore Local Members cannot request that applications are presented to DCC for

determination, as there is insufficient information to support a proposal and a resolution to approve would result in an illegal decision.

	Has an Integrated Impact Assessment been completed? If, not, please state why	Not Required
Wellbeing of Future Generations:	Summary: Long term: Collaboration: Involvement: Prevention: Integration:	
Recommendation(s):	Cabinet recommends that Council approves the granting of delegated powers to the CLO Economy and Regeneration in consultation with the Cabinet Member to determine planning applications where phosphates is an issue (pursuant to the Conservation of Habitats & Species Regulations 2017)	
Reasons for decision:	To allow for Planning Applications to be determined efficiently	
Overview and Scrutiny:	n/a	
Policy Framework:		
Corporate Priorities:	n/a	
Finance and Procurement implications:	none	
Legal Implications:		
Staffing implications:	none	
Property / asset implications:	none	
Risk(s):		
Statutory Powers:		
Background Papers:		
Appendices:	none	
Corporate Lead Officer:	Russell Hughes Pickering, CLO Economy and Regeneration	
Reporting Officer:	Alan Davies, Corporate Manager Planning Services	
Date:	26/05/21	



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