

Revised Carmarthenshire Local Development Plan 2018-2033

Appendix 1 Position Paper – Phosphates

February 2022

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Cyngor **Sir Gâr**
Carmarthenshire
County Council



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1.0 Introduction and Purpose

1.1 Process and Timeline

1.1.1 The preparation of the Revised LDP reflects the Council's statutory responsibilities under the Planning and Compulsory Purchase Act 2004 - setting out policies and proposals for future development and use of land for Carmarthenshire over the period to 2033. The Revised Delivery Agreement, as approved by County Council on the 22 October 2020 for submission to the Welsh Government (WG) for approval, identifies the timeline for the preparation of the LDP, with Adoption of the Plan scheduled in July/August 2022. Reference should be made to the main / cover report tabled in respect of the Revised LDP for further information.

1.1.2 The plan making process was suitably advancing in accordance with this timescale. [The Deposit Revised LDP was placed before full Council on the 13 January 2021](#), with the Council resolving as follows:

(a) to endorse the officer recommendations on the consultation responses received to the Deposit Revised LDP, Sustainability Appraisal, Habitat Regulations Assessment and Supplementary Planning Guidance;

(b) to agree to the presentation of the schedule of Focused Changes to Executive Board for approval for a minimum 6-week public consultation;

(c) to approve the submission of the Deposit LDP and its supporting documents, evidence and background documents as required to the Welsh Ministers for Examination;

(d) to grant officers delegated authority to respond to recommendations and requests arising from the Inspector as part of the Examination and hearing sessions;

(e) to resolve to adopt the SPG in relation to Caeau Mynydd Mawr SAC and the Burry Inlet (subject to the outcome of the Examination) concurrent with the adoption of the Revised LDP;

(f) to grant officers delegated authority to make non-substantive typographical, cartographical and/or factual amendments to improve the clarity and accuracy of the Revised Local Development Plan and its supporting documents.

1.1.3 During January 2021, officers were proceeding with actioning the above resolutions – notably the preparation of the Focused Changes for consultation. However, On 21st January 2021, Natural Resources Wales (NRW) published evidence in relation to phosphate levels for riverine Special Area of Conservation (SACs) in Wales (including the Teifi, Tywi, Cleddau and Wye). This was accompanied by planning position statements/guidance. This should not be confused with The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021, albeit interested parties are advised to appraise themselves of these also to develop a rounded picture beyond the LDP itself. NRW published an update to their

interim guidance on the 11th May 2021, the content of which and any future iterations will frame ongoing consideration.

1.1.4 This Paper provides an overview of the NRW guidance and its implications on the Revised LDP. It sets out some high-level options with a view to feeding into the main / cover report being presented to CMT in regards the Revised LDP. It is accepted that the ‘phosphate issue’ has already had timescale implications upon Plan preparation, however (and as stated in the main / cover report) the ‘phosphate issue’ has been compounded by wider considerations to emerge. This Paper should be read with the knowledge that the situation is constantly evolving as new information emerges. Notwithstanding its impact on the Revised LDP, the ‘phosphate issue’ has potentially significant wider corporate and policy implications – most notably in terms of spatial implications and the potential impact within rural Carmarthenshire. It should be noted that an earlier iteration of this Paper was provided to CMT in May 2021.

1.1.5 To provide an appreciation of the implications of the phosphate issue on a regional (and potentially national basis) it can be noted that on the 21 October 2021, Ceredigion County Council resolved a temporary but as yet unspecified length pause for the replacement LDP to allow essential evidence and data to be gathered and mitigation options to be devised.

1.1.6 This paper seeks to play an informing role to the main report being presented to CMT on the 16 of December 2021. In this respect, commentary on options, risks etc should be read with the awareness that a ‘rounded’ discussion is set out in the main paper, along with any specific recommendations on how to proceed from an LDP point of view. **Any reference to ‘Options’ (notably within Section 4.0) is done with a view to facilitating a discussion only. It will be for subsequent reports and the Council to map a way ahead in regards the Revised LDP.**

2.0 Summary of Current Issues

2.1 Natural Resources Wales' advice for planning applications within the river Special Areas of Conservation (SACs) catchments (first guidance issued January 2021).

2.1.1 Carmarthenshire is characterised by its rich environmental qualities and is home to a number of areas and features designated for their environmental importance including the Afon Teifi and Afon Tywi riverine Special Areas of Conservation (SAC).

2.1.2 Following new evidence about the environmental impacts of phosphate in watercourses, Natural Resources Wales (NRW) have assessed the 9 riverine SACs in Wales. This assessment based on tighter targets for the water quality of watercourses established that phosphorus breaches are widespread within Welsh SAC rivers with over 60% of waterbodies failing against the challenging targets.

2.1.3 As a result of this failure NRW have issued 'interim planning advice' to avoid further deterioration in environmental capacity. This 'advice' relates to all Riverine SACs whose catchments extend into Carmarthenshire namely, the Afon Teifi, Afon Tywi, River Wye and Afon Cleddau. As a Local Planning Authority (LPA), the Council is required to have regard to the advice given by NRW when making planning decisions (for both individual developments and Local Development Plans (LDP)). Consequently, any proposed development within the river catchment that might increase phosphate levels will need to clearly evidence that the development can demonstrate phosphate neutrality or betterment in its design and/or its contribution to the water body. In most cases there will be limited capacity to connect to the public sewerage system and an alternative solution will have to be found. This requirement on drainage considerations will impact on all development that increases the volume or concentration of wastewater.

2.1.4 A map to show the catchment area of the rivers within Carmarthenshire is set out in [figure 2](#).

2.1.5 Drainage proposals for developments are required to be given significant consideration within these catchment areas.

2.1.6 NRW provided [interim planning advice for developers](#). The guidance includes an outline of the type of development which is unlikely to have an impact on phosphate levels in the watercourses.

2.1.7 Subsequent iterations of the guidance have been published. The latest advice and more detailed information can also be [found directly on NRW's website](#).

2.1.8 The NRW advice note outlines, where a planning application within the catchment areas of the Afon Teifi, Afon Tywi, River Wye and Afon Cleddau cannot evidence that the development proposal would result in phosphate neutrality or betterment, that unfortunately the Local Planning Authority would not be able to support the application. This reflects the unacceptable impact on the water quality of the rivers which are sensitively designated as a SAC. This also has implications for the policies and proposals of the Development Plan (including site allocations).

2.1.9 Officers are working on understanding the full implications of NRW's guidance for current planning applications and the progress of the Revised LDP. The Council must ensure that development proposals do not harm the environmental capacity of our watercourses. Officers are also working collaboratively with NRW in understanding the wider issues and identifying the way forward for all proposals, to find solutions that comply with the requirements of the new interim planning advice.

2.2 Waste Water Treatment Works (WwTW)

2.2.1 The position with regards WwTW phosphate permits is as follows. What is important to note however is that all the permitted works are located outside of the affected areas.

2.2.2 There are current phosphate permits at: Cross Hands, Garnswllt (Ammanford), Llanelli, Parc y Splott (Carmarthen) and Pontyberem.

2.2.3 The following are within the 2020 -2025 Dŵr Cymru Welsh Water (DCWW) Asset Management Plan (AMP7) - Carway, Cwmgwili, Cwmtawel (Cross Hands), Pontyates, Pontyberem, Trimsaran and Llanedi.

2.2.4 Pontyberem is included twice above because there is a current permit, but it is understood that this is being amended in the current AMP (AMP7) to meet the requirements of the Water Framework Directive (WFD)'s 'Good Status' driver. It is also understood that the permit at Cross Hands WwTW is being amended to meet the requirements of the WFDs 'Prevent Deterioration' driver.

2.2.5 With regard to future investment programmes, DCWW have an agreed two AMP programme (i.e., AMP7 & AMP8) with NRW. However, whilst AMP7 is known the schemes for inclusion in AMP8 are not yet at a stage where they've been finalised. It is understood that the location of WwTWs where phosphate permits are required to be introduced or tightened is guided by NRW's National Environment Programmes (NEP).

2.2.6 The current review of WwTW phosphate permits by NRW in light of the new JNCC conservation objectives may demonstrate inadequate permit levels in the settlements outside of the SAC catchments. If this is the case, there would be an immediate implication for development in growth areas / urbanised areas. It is anticipated that this information will inform investment for AMP8 (commencing 2025). However, in this scenario there is likely to be an implication for development (possibly for a period of 2-3 years) if solutions were solely dependent on DCWW infrastructure.

2.2.7 A phosphate permit limit is imposed on a respective DCWW WwTW by the Environmental Regulator (i.e. NRW in Wales). This essentially requires that DCWW ensures that they remove phosphates from wastewater to meet that limit. Phosphate permits are assessed over an average of all phosphate results in a rolling 12-month period. The typical method to remove phosphorous from a WwTW is to introduce ferric (iron) dosing and ‘strip’ the phosphate – the ferric reacts with the phosphate and forms solid precipitates which are then removed via a settlement tank.

2.2.8 It can be concluded that the issues faced are infrastructural as well as environmental in this regard. This also frames the discussion with an awareness of the wider role of multi-agency organisations – e.g., DCWW and NRW and in this regard the Council will be unable to address this matter in isolation. The issues faced are similar to those experienced in the Llanelli WwTW catchment over recent years and the solution is founded in the principles of partnership working, enabling policy provisions but also financial investment. Innovative and sustainable solutions, such as the [Rainscape approach in Llanelli](#), are noted.

2.2.9 DCWW are conducting source apportionment data in affected SAC catchments throughout Wales. The data collected will identify the source of pollution along the SAC rivers i.e., diffuse or point source pollution. An appreciation of pollution source will determine remediation strategies employed. Indicative timeline for completion of this work is the end of 2021.

2.3 Future Considerations

2.3.1 Multi-partnership working

2.3.1.1 The NRW phosphate guidelines have had immediate and significant implications for the development sector. As such, these issues have been responded to from an initial planning perspective. However, it is important to note that the implications extend far beyond the confines of the planning discipline (e.g. the agricultural sector). Under the current interpretation of the guidelines, there are implications for economic growth and provision of health and education settings. It is noted that the phosphate guidelines place a permanent environmental constraint on the County, and will be a consideration in any future plans or projects.

2.3.2 Marine SAC catchments

2.3.2.1 While Officers are responding to the implications of the river SAC phosphate guidelines, there is potential for further constraints to be imposed on the County. NRW have conducted a review of water quality in the Marine SAC areas. Carmarthen Bay and Estuaries is designated a SAC and is a large estuarine site, encompassing the estuaries of the Rivers Loughor, Tâf and Tywi (coastal plain estuaries) and the Gwendraeth (a bar-built estuary). These four estuaries form a single functional unit around the Burry Inlet. The environmental constraints placed on any development within these most populous areas of the County would have a significant effect that exceeds the current challenge faced by the river SAC constraints. The publication date of the Marine SAC guidelines has not been disclosed by NRW.

3.0 Implications for the Revised LDP

3.1 Residential: Allocations

3.1.1 A total of 527 allocated housing units (7.52% of all housing allocations within the county) are impacted. Most of the issues impact on Clusters 4 and 5 respectively as defined within the strategy of the Revised LDP.

3.1.2 Reference is made to [figures 1 and 2](#) together with [table 1](#) for more information and analysis.

3.1.3 Data analysis undertaken April 2021.

3.2 Residential: Other components of housing supply

3.2.1 In reference to the Plan's policy framework (notably HOM3) it should be noted that 217 of the allowance of up to 465 housing units in Tier 4 are affected. That is 46.6% of the small site allowance. Clusters 2 and 6 are unaffected, but clusters 4 and 5 are severely impacted. There is also an impact in Cluster 1 (21 of 92 units).

3.2.2 There are approximately 129 large windfall units within the affected areas.

3.2.3 Data analysis undertaken April 2021.

3.3 Employment Allocations

3.3.1 In total some 1.85 ha (2.4% of all employment allocations within the County) are impacted. All are located within Clusters 4 and 5. Of the 1.85 ha, 0.6 ha have full planning permissions.

3.3.2 It should be noted that the delivery of employment proposals across the County is also supported through policies which enable appropriate unallocated opportunities to come forward. Such opportunities may be adversely impacted.

3.3.3 Data analysis undertaken April 2021.

3.4 Mixed Use Allocations

3.4.1 In relation to the mixed-use allocations as defined under Policy SG1 – Regeneration and Mixed Use Sites - only SeC16/MU1 Beechwood Industrial Estate in Rhosmaen, Llandeilo is impacted. The total area of the mixed-use site is 1.61ha, however 0.75 ha has been identified for employment uses on this site and has been accounted for in the employment allocation figure. Data analysis undertaken April 2021.

3.5 The Settlement Framework (Strategic Policy SP16)

3.5.1 An analysis (April 2021) has been undertaken on those settlements that are included within the affected areas. Cluster 5 is entirely impacted, Cluster 4 almost entirely impacted – whilst there are impacts on settlements in Clusters 1, 3 and 6 also. Whilst not all these settlements are earmarked to receive growth (i.e., allocations), the implications are notable – including upon those criteria-based policies in the Plan – e.g., housing and employment.

3.6 Sustainability Appraisal / Strategic Environmental Assessment

3.6.1 Dependent on the agreed way forward, there will be a need to review the SA/SEA in an iterative manner. Given the nature of the issues being discussed, there are likely to be social, economic, and environmental implications that will require review.

3.7 Habitats Regulations Assessment

3.7.1. Irrespective of the agreed way forward the emergence of the phosphate issue in relation to the freshwater SACs will require the Revised LDP to be subject to a further screening in relation to its potential impact on these designations. Dependent on the agreed way forward, this may require a full Appropriate Assessment being required for each development allocation where it may result in an impact on the SAC and its water quality. It should be noted that without deliverable and evidenced mitigation no site will pass a full Appropriate Assessment.

3.8 Other impact assessments / Plan Evidence Base

3.8.1. Dependent on the agreed way forward, there will be implications – notably those impact assessments underpinning the Plan's preparation. In extreme circumstances and subject to the scale and strategic nature of any change to the Plan there may be a requirement to revisit some of the earlier stages of the Plans preparatory process.

3.8.2 Those key pieces of evidence that are likely to require review include settlement role and function, spatial options, housing supply, viability (in the event of a developer pays option) and the Welsh language impact assessment. The scale and scope of the work will vary subject to the respective option and reflects the need for the Plan's evidence base to be iterative and responsive to changes in circumstances and the Plan's content. Reference should be made to the main / cover report provided.

3.9 Mitigation and other Solutions

3.9.1 The Revised LDP, in reflecting the issues associated with phosphates, will (irrespective of the way forward) require additional policies to mitigate (where appropriate) for the impact and potentially provide a pathway for acceptable developments to be considered and permitted. In order to deliver such policies, provisions and mechanisms will need to be developed which provide evidence and a framework for the implementation of these policies. Such approaches are further considered within this paper; however these are designed to facilitate discussion only – with detailed consideration required by future reporting and the input of the Council.



Figure 1. Revised LDP Key Diagram (with settlement names added to aid the reader).

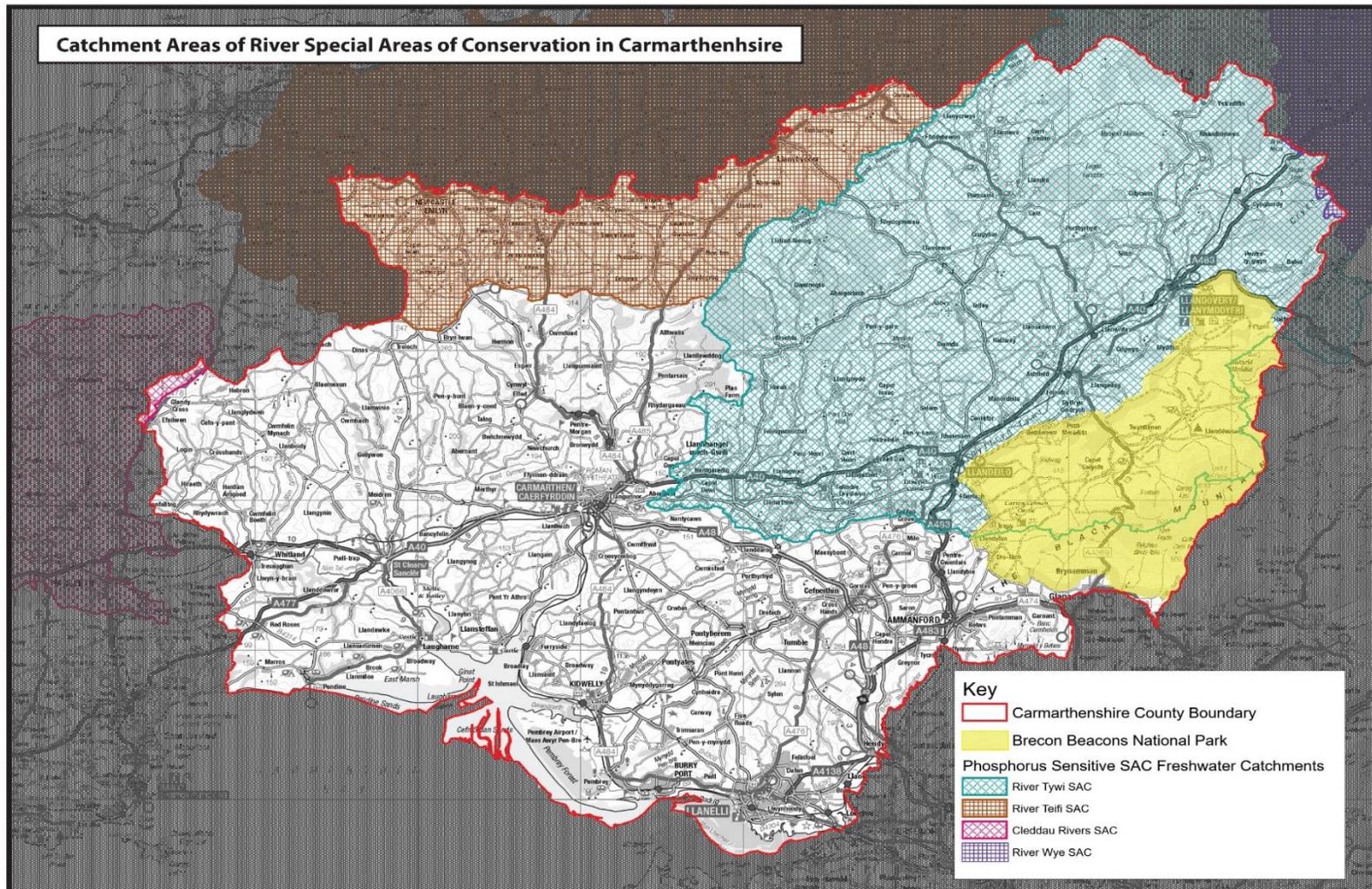


Figure 2. Catchment Areas of River Special Areas of Conservation in Carmarthenshire

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	Allocated Units within the cluster	Allocated Units within the SAC area	Number of units within the SAC with planning permission (Full or RM)	Affected Units	Percentage affected	Number of units without public sewerage
Cluster 1	1655	53	21	32	60.38% of allocated units in the SAC area = cluster total of 1.93%.	8
Cluster 2	3047	0	0	0	0.00%	0
Cluster 3	1315	0	0	0	0.00%	
Cluster 4	405	397	12	385	96.98% of allocated units in SAC area= cluster total of 95.06%	22
Cluster 5	122	122	12	110	90.16% of allocated units in SAC area = cluster total of 90.16%.	0
Cluster 6	461	0	0	0	0.00%	
Total	7005	572	45	527	7.52% of all housing allocations within the County	30

Note: Trelech is the only settlement within Cluster 4 outside the SAC – Its allocated site has planning permission for 8 units.

Table 1. Analysis of allocated housing sites (April 2021)

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		Allocated Units within the SAC area	Allocated Units within the SAC with planning permission (Full or RM)	Affected Units	Number of units without public sewerage
Cluster 1	Capel Dewi	8	6	2	8
	Nantgaredig	30	0	30	0
	Pontargothi	15	15	0	0
	Total	53	21	32	8

Table 2 Analysis of Allocated Housing Sites by settlement within the SAC – cluster 1 (April 2021)

		Allocated Units within the SAC area	Allocated Units within the SAC with planning permission (Full or RM)	Affected Units	Number of units without public sewerage
Cluster 4	Newcastle Emlyn	51	6	45	0
	Llanybydder	63	0	63	0
	Pencader	79	0	79	0
	Drefach Felindre	22	0	22	0
	Waungilwen	6	6	0	0
	Llangeler	5	0	5	0
	Pentrecwrt	14	0	14	0
	Saron / Rhos	35	0	35	0
	Llanllwni	22	0	22	22
	Cwmann	50	0	50	0

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	Capel Iwan	16	0	16	0
	Llanfihangel ar Arth	7	0	7	0
	Pontyweli	19	0	19	0
	New Inn	8	0	8	0
	Total	397	12	385	22

Table 3 Analysis of Allocated Housing Sites by settlement within the SAC – cluster 4 (April 2021)

		Allocated Units within the SAC area	Allocated Units within the SAC with planning permission (Full or RM)	Affected Units	Number of units without public sewerage
Cluster 5	Llandovery	20	12	8	0
	Llandeilo	47	0	47	0
	Llangadog	24	0	24	0
	Talley	7	0	7	0
	Cwrt Henri	16	0	16	0
	Cwmifor	8	0	8	0
	Total	122	12	110	0

Table 4 Analysis of Allocated Housing Sites by settlement within the SAC – cluster 5 (April 2021)

4.0 Options Appraisal (including SA/SEA and Habitat Regulations Assessment (HRA))

4.1 Overview

4.1.1 The following high-level options are provided to outline some of the considerations which will inform the future work in relation to the Revised LDP arising from phosphate implications. It should be noted that matters are evolving with the following intended to guide our understanding of the options available. This section should be read with the awareness that whilst there can be an emphasis on seeking to avoid the affected areas, there is still likely to be a need to identify solutions within the areas themselves as part of a forward-thinking approach. **It should be noted that in respect of the below (including the Risk Analysis, SA-SEA and HRA commentary) these should not be read in isolation of the main / cover report tabled in respect of the Revised LDP. As such, the purpose of this paper is to provide a supporting / informative role. No decisions have been made; it will be for the Council to determine such matters.**

4.2 Timescales

4.2.1 It is recognised that the issues of phosphates and the publication of the NRW Interim Guidance has had a wide-ranging impact on Planning across Wales. In this regard the preparation of an LDP is no different with clear implications upon the content and deliverability of its policies and provisions as well as its compliance with legislation and national planning Policy and guidance. Reference should be made to the main/cover report in respect of the Revised LDP being presented to CMT on the 16 of December 2021.

4.3 Option 1 – No Change

4.3.1 This would require the inclusion of mitigation policies and a robust monitoring framework to enable future delivery to occur when potential solutions emerge. Such policies could be included through the examination process - allowing the publication of the focused changes to proceed, and the Plan submission for examination. Alternatively, policy changes would be agreed at Council with full consultation undertaken prior to the Plan's submission.

4.3.2 However, whilst there is the potential to develop mitigation policies there remains a significant level of uncertainty on the deliverability of the Plan in those parts of the County identified in Figure 2. This raises significant risks in relation to the successful adoption of the Plan under this option. In addition, further risks include a failure to comply with the Council's duty as the Competent Authority under the Habitat Regulations (HRA). In this respect the content of the Revised LDP will require a further screening with allocated sites in the affected areas requiring an appropriate assessment under the Habitat Regulations.

4.3.3 This option is not considered to be realistic unless there are investments by DCWW programmed in advance of the Examination to Wastewater Treatment Works WwTW in the north / west of the County within the Plan period so that they are phosphate enabled and that development can be delivered by 2033. This would still result in the requirement to move much of the proposed development in the affected catchments to the end of the Plan period / trajectory which would call into question how realistic the Plan is, and its compliance with the Tests of Soundness. In terms of private investment through a ‘developer pays’ principle, it is highly unlikely to secure sufficient contributions to enable upgrading WwTW facilities. It is recommended that such a scenario is run through the high-level viability evidence which supports the Plan. Additional costs could render developments unviable or may necessitate a reduction in other planning contributions such as the provision of affordable housing and public open space etc. The emphasis would have to be on proactive monitoring, and it would have to be demonstrated that the mitigation is achievable and realistic.

4.3.4 Risk Analysis:

‘Con’s’:

- Risk of the authority acting unlawfully as the Competent Authority under the Habitat Regulations requirements.
- Deliverability of the Plan’s content given the constraints associated with phosphate levels – subsequent failure to adopt the Revised LDP in light of non-compliance with the Tests of Soundness.
- Potential reputational damage associated with either failure to meet legal duties or ejection/non adoption of the Plan - in that the Plan is unlikely to be considered deliverable at Examination; and,
- Financial implications –will incur costs leading up to the point of non-adoption.

‘Pro’s’:

- The Plan’s content would reflect that approved by Council.
- Reflects the consensus building, consultation, and a robust evidence base.

4.3.5 Note: Potential changes would be required to ensure to the Plan reflects the issues associated with phosphates and the need for policy interventions to address known and emerging means of mitigation. There is a need for evidential proof of mitigation that is scientifically sound and accurate. This would require democratic approval if proposed for inclusion ahead of the examination.

4.3.6 **SA/SEA and HRA Analysis:** Proceeding with Option 1 would constitute non-compliance with the Statutory Duties of CCC under the Conservation of Habitats and Species Regulations 2017 (as amended) by failing to protect the integrity of the Special Area of Conservation (SACs). In light of the announcement by NRW on 01.02.2021, there is a statutory requirement to re-assess the affected allocations.

4.3.7 The potential for mitigation through DCWW investment in the catchment cannot form a basis for proceeding in an absence of a legally binding agreement demonstrating reasonable scientific certainty that adequate mitigation can be relied upon to underpin a conclusion of no adverse effects on integrity.

4.3.8 Furthermore, Option 1 also fails to take account of the LDP's Sustainability requirements, including a requirement for development within environmental limits, and to promote sustainable economic growth.

4.4 Option 2 – Constraint Led

4.4.1 This option would involve the removal of all development allocations (including housing and employment) within the affected areas from the Plan. Whilst this would address some of the legal and procedural issues in progressing the Plan, it would reduce the development opportunities arising in the affected areas. However, it should be recognised that the implications of the phosphate issue would de facto have this effect in any case. Whilst it would not necessarily see the settlements in the affected areas re-classified in terms of their position in the strategy, it would see their contribution in terms of growth downgraded. This constraint led approach would not be consistent with a number of corporate goals - including the '10 Towns' and Rural Regeneration Strategy.

4.4.2 The removal of development allocations from the affected area would result in a reduction in the Plans growth figures, notably in terms of new homes. Reference should be made to the main / cover report being provided to CMT in terms of population projection evidence. In terms of housing allocations, this would equate to over 500 units and their deletion from the Plan altogether would in all likelihood necessitate a review of the Plan's evidence base. Furthermore, there would be the loss of opportunities within those settlements without allocations and/or those which would be subject to criteria-based approaches – notably through policies HOM3 and HOM4 as set out within the deposit Plan.

4.4.3 It must however be noted that the real-world effect of the phosphate position in the affected areas significantly limits the potential for developments to come forward. This would be irrespective of their allocation within the Revised LDP. Further policies would be required in the Plan to allow for developments to come forward where the impact arising from the proposals could be mitigated. Such mitigation can, amongst others, form a mix of DCWW investment, technical solutions, development credits associated with offsetting impacts as well as dedicated area specific policies in the affected areas. This would ensure appropriate proposals could be permitted where justified (albeit not explicitly identified within the Plan) and as solutions and mitigation approaches are developed.

4.4.4 Risk Analysis:

'Con's':

- Requirement for updated evidence to reflect the reduction in the Plan's housing requirement from the 10,160 homes (note this includes a 15% flexibility allowance).
- Removal of housing and other allocations within the affected areas – reflecting the reduced potential for developments as a result of phosphates in these areas.

‘Pro’s’:

- Will allow for issues in regards site specific / appropriate assessment requirement for individual sites to be set aside.
- Would reduce the Plan’s requirement for new homes – this would need to be aligned with updated evidence.
- Would enable the Plan to proceed to submission and anticipated adoption.

4.4.5 SA/SEA HRA Analysis: In the light of the interim statement from NRW, and in the absence of a full appraisal of the facts and legally binding and scientifically proven measures to remove, mitigate or offset the phosphate load from qualifying developments, the ‘halting’ of development within the affected catchment would be compliant with the statutory duties of CCC under the Habitat Regulations.

4.4.6 Reference is made to the [Moving Rural Carmarthenshire Forward Report](#). This was approved at Full Council on the 11 September 2019. Of note is recommendation 10 *“That the Council ensures that the revised Local Development Plan: a. enables appropriate scale residential and business development in smaller community areas as needed b. enables appropriate tenure mix in residential developments, based on local housing need c. enables the appropriate allocation of affordable homes within rural areas d. enables tourism and business development in rural areas to support future development and diversification”*. In light of this, consideration will need to be given to the impact of the removal of 500 houses from the northern rural areas of Carmarthenshire in socio-economic terms – including the Welsh Language as well as house prices and availability of employment. The extent of this effect has not yet been determined.

4.4.7 This option has a positive alignment with the environmental considerations and requirements of the Revised LDP, and in its obligation to ensure that growth is sustainable.

4.5 Option 3 – Redistribution of homes and jobs

4.5.1 This option would require the removal of the allocated sites in the affected areas. However, rather than deleting the numbers from the Plan, the growth would be redirected towards other sustainable locations. These ‘replacement’ allocations would not be within the affected riverine catchments and possess phosphate enabled WwTW (however refer to paragraphs 2.2.6, 4.5.11 and 4.5.12 of this Paper).

4.5.2 Three potential scenarios for redistribution have been identified. These are:

4.5.2.1 *Balanced Redistribution* – This would require the lost growth from the phosphate affected areas re-distributed across the settlement hierarchy. This would be reflective of the respective settlement’s sustainability credentials. Such areas could include the Gwendraeth, Amman, and the outskirts of Carmarthen reflecting their social, economic and environmental facets. Such facets include the Welsh language and particular employment sectors (noting the key role of the agricultural industry).

4.5.2.2 *Ten Towns* - A key recommendation emerging from Moving Rural Carmarthenshire Forward related to the rejuvenation and regeneration of Ten Towns across rural Carmarthenshire. Part of this initiative includes working with the local communities and stakeholders in ten identified rural towns (and their surrounding communities) to develop individual plans that aim to deliver long-term strategic visions to secure their economic, cultural, social, and environmental sustainability. In acknowledging the potential impact on rural areas, this Option provides a variation on the redistribution scenario by providing an opportunity to redistribute growth through the ten towns framework. Such an approach acknowledges environmental capacity, role and function and corporate focus on these settlements. An analysis of the position is as follows: Losing development allocations: Llandovery, Llandeilo and Llanybydder and Newcastle Emlyn. Option to 'move' growth to the remaining: St. Clears, Whitland, Laugharne, Kidwelly, Cwmamman and Cross Hands. It is clear that in developmental terms St Clears and Whitland exhibit many qualities, notably their location on the trunk road and lack of environmental constraints. Cwmamman and Cross Hands both exhibit higher levels of Welsh speakers and both have phosphate enabled WwTW serving them.

4.5.2.3 *Future Wales Approach* - Published on the 24th February 2022 Future Wales represents the development plan for Wales and along with the forthcoming regional Strategic Development Plans will shape the land use planning from a national to local level. This scenario in reflecting the provisions of Future Wales provides opportunities to realign any growth within the Swansea Bay City deal context. It would involve 'moving' the growth earmarked for the rural areas affected by the phosphate issues to the more urbanised southeast. This option would allow for a further emphasis on cluster 2 as a recognition of its strategic importance as a regional centre (notably Llanelli through to and including the Ammanford/Cross Hands area). This approach would allow for alignment with national policy. However, it would not conform in spatial terms with the balanced approach as identified within the Revised LDP and the Council rural regeneration initiatives. It should also be noted that cluster 2 already provides a notable contribution to the overall housing supply. Any realignment of growth to this area would need to be considered in light of the environmental and infrastructure constraints in this area. Reference should be made to the main / cover report in respect of the implications of the Revised TAN 15 (albeit this is now delayed until June 2023) notably the Llanelli area is impacted by flooding matters.

4.5.3 Note: Through the introduction of mitigation and dedicated policies in the affected areas themselves, this option will also seek to allow some scope for criteria-based approaches in the phosphate affected areas so that some development can take place as and where appropriate. Such mitigation can form a mix of DCWW investment, technical solutions, development credits associated with offsetting impacts as well as dedicated area specific policies in the affected areas. This would ensure appropriate proposals could be permitted where justified (albeit not identified within the Plan) and as solutions and mitigation approaches are developed.

4.5.4 Risk Analysis:

'Con's':

- Potential requirement to revisit the Deposit Revised LDP with cost and timetabling implications.
- Will still lead to a significant reduction of growth in the impacted rural areas, thus potentially impacting on investment, provision of jobs and homes.
- The re-location of growth would need to be supported by robust evidence of need for the development, the impact on infrastructure capacity and social implications.
- Deliverability within the plan period would also need to be robustly evidenced.
- Could result in a potential over provision of homes in certain areas, resulting in a negative impact on local communities and the Welsh language within them.

'Pro's':

- Dependent of approach it could align with corporate objectives (subject to scenario selected).
- Maintain the level of growth identified in the Revised LDP.
- Potential to align with role and function of settlements and allow for recognition of the contribution of rural communities and their housing / employment need.
- Future Wales scenario ensures compliance with national policy.

4.5.5 **SA/SEA HRA Analysis:** At present there is an absence of information on headroom in phosphate enabled WwTW's. DCWW have not confirmed they have sufficient capacity in these areas for the additional wastewater of the additional housing or of the subsequent increased phosphate load that this will incur.

4.5.6 This option removes known environmental risk from the northern end of the county. However, moving of allocations does not present a long-term sustainable solution, in that it fails to consider the long-term implications of increased phosphate loading in the absence of clarity or agreement on mitigation or remediation. Consideration will need to be given to the impact of the removal of 500 houses from the northern rural areas of Carmarthenshire in socio-economic terms – including the Welsh Language as well as house prices and availability of employment. It could however allow for a solution that facilitates the adoption of the Plan (the plan period runs up to 2033).

4.5.7 Development in Welsh speaking rural communities would be reallocated to other areas of the County, with isolated potentially adverse effects on the northern portion of the county. However, those areas outlined above – notably the Amman and Gwendraeth areas – are traditional heartlands in terms of Welsh speakers and represent key spatial priority areas in this regard. A balance would need to be struck in terms of facilitating enough development to protect and enable the Welsh language to thrive in these areas, whilst care would be needed not to redistribute growth to a level which would be detrimental to the future of the language.

4.5.8 In relation to the reallocation of housing in the 10 town settlements, this seeks to promote a model of sustainable economic growth, with spatial allocations aligned with infrastructure investment, through appropriate siting of new developments with existing provision of public transport infrastructure. This aligns with the objectives of the emerging Transport Strategy for Wales: Llwybr Newydd. This also accords with Future Wales.

4.5.9 Future Wales does have a national growth plan for Llanelli linked to Swansea Bay. This is based on co-locating homes, jobs, and services. However, it also has a Regional Growth plan which includes Carmarthen, the Teifi Valley including Newcastle Emlyn, and Lampeter which is directly impacted by the phosphate issue.

4.5.10 It is noted that the Future Wales scenario would perform well in terms of the SA/SEA in terms of spatial sustainability, regards will need to be given to socio-economic impact in those affected areas. In HRA terms, its positive elements would need to be balanced against its potential impacts on the Marine SAC (i.e. the Burry Inlet).

4.5.11 If the removed allocations are directed to settlements that are served by a WwTW with phosphate stripping then the LA as competent authority we would first have to conduct an AA on the works. There would also be a potential need to reduce wastewater being sent to the works. The scale of this intervention and means of achieving these requirements have not yet been mapped out by officers.

4.5.12 It is also noted that there is ambiguity regarding the adequacy of the current phosphate permits of the WwTW. There is a need to determine if the current permits are valid for the current population, and proposed housing allocations in these non-SAC catchment areas.

4.6 Option 4 – Pause

4.6.1 This option acknowledges the fact that the Council has an Adopted Plan in place and given the uncertainty with regards the ongoing emergence of the ‘phosphate issue’, the Council may consider it appropriate to pause with the preparation of the new Plan temporarily. As stated previously, there is a likelihood that there will be future focus on the estuarine areas, notably in terms of nutrients. It is understood that the existing Plan would carry on post the ‘drop dead date’. The current Development Plan is still allowing for the consideration of development proposals in those areas that are not affected and as such key corporate developments (including the strategic / corporate development of significance in the growth areas) can be considered. However of course, there are significant issues in the affected areas of the County.

4.6.2 Risk Analysis:

‘Con’s’:

- Timescale issues; the current Development Plan becomes increasingly out of date, albeit it can still be used.
- Failure to have an up to date adopted Plan would increasingly see applications considered in light of national policy with less local emphasis.

‘Pro’s’:

- Opportunity to focus on developing evidence and solutions in relation to phosphates and to seek to build consensus and to seek to develop a multi-agency approach to this matter. It should be noted that this issue affects many other Councils to varying degrees – notable of which within a cross border context is Ceredigion, Powys, Brecon Beacons and Pembrokeshire.

4.6.3 **SA/SEA HRA Analysis:** This option would allow a full assessment of implications on HRA and SA/SEA.

4.6.4 At present there are data gaps which are inhibiting informed choices. There is also an anticipation that further nutrient information relating to Nitrogen and/or Ammonia may be released from NRW. Option 4 will allow for a full appraisal of the phosphate situation, and potential combination effects to be made.

4.6.5 Any solution necessitates a cross-sector approach. At present, discussions are at a stage of infancy. Not all relevant partners have been engaged with. Any potential for mitigation under the Habitat Regulations will require a legally binding agreement demonstrating reasonable scientific certainty that adequate mitigation can be relied upon to underpin a conclusion of no adverse effects on integrity of the SAC.

4.6.6 A complete analysis on the consequences is also required to present a proposal that ensures the Council is proceeding in its duty to act in a Sustainable manner.

4.6.7 A full appraisal of the adequacy of the WwTW phosphate permits within Carmarthenshire is required in order to determine the soundness of the plan. A full review of such permits is being conducted by NRW on a National basis. Consideration can be given to any timing issues in this regard with regards the Revised LDP.

4.7 LDP Tests of Soundness

4.7.1 The process itself for the preparation of the LDP is set within statutory regulations, with further procedural guidance contained within the LDP Manual as prepared by the Welsh Government. The preparation and content of the LDP will be assessed against three tests of soundness namely: 1. Does the plan fit? 2. Is the plan appropriate? 3. Will the plan deliver? From an initial review, particularly from an evidential and procedural perspective, would indicate a preference for option 3 in terms of soundness. **However, this is a high level review and it should be noted that the purpose of these options is to simply facilitate discussion – this Paper does not seek to make any specific recommendations.**

4.7.2 Reference should be made to the main / cover report provided in respect of the Revised LDP to CMT where such issues are discussed in a rounded manner. This paper therefore seeks to inform that main report but is not intended to allow for detailed consideration of Revised LDP matters over and above scoping out the ‘phosphates issue’.

5.0 Potential Technical Solutions and Policy Based Approaches

5.1 Importance of identifying solutions

5.1.1 Whilst Section 4 of this Paper discusses ‘avoidance options’ at a macro scale, there will still be an expectation that solutions are identified within the affected areas themselves so as to allow suitable developments to proceed. Further research will be undertaken by officers in regards potential mitigation measures, however an outline of some initial outcomes follows below. Consideration will be given to introducing dedicated local policies for the areas affected and as such will require denoting on the Proposals Map. This is a similar approach to that within the Caeau Mynydd Mawr and Burry Inlet areas. It should be noted that the solutions identified will be subject to a multi-agency partnership-based approach.

5.1.2 It is important to note that the Revised LDP will only be part of the solution. In this regard, with a view to reviewing the risks facing the Council, there will be some matters which are outside the influence and scope of the Planning Service and indeed the Council itself. The scale of the issues, both in terms of spatial extent and cross agency responsibility, are likely to mean that a multi partnership approach will be required at a landscape scale – e.g., Memorandum of Understanding (MoU).

5.1.3 In terms of limitations and to appreciate the scale of the issues facing the Council, reference is drawn to the position in the Brecon Beacons National Park. A report (ENC7Item 8) submitted to the [Planning, Access and Rights of Way Committee on Tuesday, 26th January, 2021](#) summarised the issues faced and these would be of relevance to Carmarthenshire also. Of particular note within the [Cover Report](#) is the following extract:

“3.1 Restricting new planning permissions will only ever have a minimal impact on meeting phosphate targets and bringing the designated features back into favourable condition; significant factors that are largely outside the scope of planning control can have a much greater impact. Unfortunately, the situation has not been arrested sooner and we are uncertain as to how long ‘legacy phosphates’ and phosphate loading introduced by uncontrolled activities will mean that new permissions will need to be restricted. This may include certain agricultural developments that are submitted via the ‘prior notification’ procedure. At the very least, it is likely that ‘prior approval’ will be required in most circumstances to allow for the relevant assessments to take place. Officers are considering the potential impacts on other forms of permitted development, including homeowners’ rights to extend and make alterations to their property.”

3.2 It is likely that a concerted cross-sector, landscape-scale effort to improve environmental quality and sectoral practices alongside regulation and enforcement will be required to improve water quality and build the ecological resilience of the River Wye so that the designated features it supports are returned to favourable condition. We are members of the River Wye Nutrient Management Plan Board, its technical advisory group, and the Wye Catchment Partnership. Despite the best efforts of these bodies (and others) over the last 10 years, the issue is yet to be resolved.

3.3 Although a very difficult task, establishing the evidence-base, modelling and monitoring indicators needed to demonstrate environmental and ecological capacity to accept the loading of new development must be a priority.

3.4 The letter received from NRW and its enclosures were sent to agents on 21 December 2020, with a commitment to meeting with them in the near future. Officers have also been asked if they can contact those to whom pre-application advice has been given during the previous 6 months to alert them to the issue. A high-level meeting between representatives of the National Park Authority and MP's took place on 8th January. A verbal update on any developments regarding the issue can be provided at PAROW.

3.5 The development of landscape scale nature-based solutions to the issues identified within this report will be a matter for investigation within the next iteration of the Management Plan. This will take concerted partnership working with a range of stakeholders not least, NRW, DCWW and landowners/managers within the affected catchment. The first meeting of such a grouping is scheduled to take place on the 18th of January”.

5.1.4 In noting that the provisions of The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 are not directly related to the LDP, it further frames the cross sectoral dimension to the issues being faced. Members are therefore asked to note that the Council, as a corporate body, faces challenges in policy terms in terms of reconciling its commitment to nature conservation and its declaration of the climate emergency with the requirement to recognise and support those agricultural and rural communities which form a key component of the social fabric of the County.

5.1.5 Generally, there will be a requirement for strategic avoidance or mitigation solutions. Projects to convert agricultural land to open space/habitat and upgrading of WwTW have been evidenced as the primary success measures in England. It is also worth noting that surface water run-off appears to be emerging as a further phosphate load consideration, arising from garden fertilisers and road salt for example, in relation to protected habitats. [Reference is made to this website](#) for further information.

5.2 Technical Solutions

5.2.1 Immediate Measures

5.2.1.1 Any measures must be undertaken with full regard to the EU Court of Justice, 2018 ruling known as the ‘Dutch Case’. The judgement ruled that development must cause ‘no detriment’ to water quality. The Dutch case ruling applies to all stages of the planning process, in a catchment where water quality has been identified as an issue. While mitigation is allowed under this ruling the future benefit of mitigation measures cannot be relied upon in an appropriate assessment, where those benefits are uncertain at the time of the assessment. The primary short-term measure that has been employed in English counties to address this is the phosphate calculator. The calculator is used by developers to calculate the phosphate burden of a development, and this information is submitted as part of a planning application.

5.2.1.2 Development is only granted if phosphate neutrality is achieved or if certain and measurable mitigation can be secured. Fallowing of land has been the primary mitigation response in the southern English counties to date. Other developer responses have included private wastewater treatment facilities on the development site, and developer investment in public WWTW. These have been recognised to be cost ineffective and not a viable long-term solution in the South of England. The financial unviability is likely to be more pronounced in the affected catchment areas of Carmarthenshire due to lower house prices, smaller profit margins, and the need for affordable housing.

5.2.2 Calculation of Phosphate Loading

5.2.2.1 For each qualifying planning application or LDP development allocation, an estimate of the additional phosphate load can be made. Phosphate loads are estimated on a rate of phosphate produced per dwelling assuming an average occupancy of 2.3 people per dwelling, unless there is clear evidence that a higher or lower number is appropriate for the type of residential development proposed. The phosphate load is calculated on the basis that residential development will be built to the highest water efficiency standards provided for by the building regulations. Each local planning authority will impose a planning condition on all planning permissions for one or more net additional new dwellings requiring construction to the optimum requirement. Natural England and the Environment Agency have provided evidence to justify this imposition within England.

5.2.3 Short-Interim Phosphate Mitigation Measures

5.2.3.1 The following mitigation measures (see overleaf) have been implemented through a Memorandum of Understanding (MoU) within English Counties e.g. Wiltshire.

- (i) - Diverting Surface Water Flows and groundwater ingress away from the Foul Sewage Network (long term);
- (ii) - Addressing misconnections (short term);
- (iii) - Reducing flows to the Foul Sewage Network through water efficiency measures (immediate);
- (iv) - Silt Traps and small farm wetlands on agricultural land (Short term –implemented in 1-2 years?);
- (v) - Taking land out of intensive agricultural (arable or grass) production through offsetting (Long-term);
- (vi) – Change land-use from intensive to Less intensive grass production i.e., dairy and pig farming to cattle (Short term 1-2 years);
- (vii) – Partnership funding for grant applications e.g., measures 4 and 8 (Short term) – potential for grant funding uncertain;
- (viii) - Diverting surface water flows and groundwater ingress away from the foul sewage network (Long term).

5.2.4 Mid-long-term measures

5.2.4.1 Memorandum of Understanding (MoU) – This would take the form of a multi-agency agreement to ensure that development is ‘phosphate neutral’, and therefore will not have adverse effects upon the integrity of the affected SAC catchment area. A MoU describes where the parties will work together to help develop and implement appropriate phosphate controls and mitigation measures.

5.2.4.2 Nutrient Management Board/Plan – This would take the form of a multi-agency board to identify sources of nutrients that are entering the river and steps that can be taken to manage them. An example of this approach can be seen in Herefordshire. The aim of the plan is to manage nutrients in the affected SAC to enable growth in Carmarthenshire whilst conserving the river environment. The remit of the board is likely to include gathering an evidence base, appraising options and developing a local level action plan.

6.0 Progress Made

6.1 Immediate action taken

The following immediate action has been taken as part of a proactive approach by the Council.

6.1.1 Procurement of specialist advice

6.1.1.1 Given the levels of complexity involved with these issues, it was identified that the procurement of specialist expertise would be needed to provide immediate and strategic advice and guidance on measurement and mitigation of phosphate within CCC. A procurement exercise was undertaken, and Ricardo Energy and Environment were appointed in July 2021 by the Council. The commission objectives are as follows.

- In conjunction with CCC, identify a list of multi sector stakeholders to attend a 'big tent event' whereby awareness of the phosphate issue raised, and solutions are discussed.
- To develop a phosphate calculator for Carmarthenshire.
- To formulate immediate and interim mitigation guidelines that can be used by developers within any Neutrality Assessments/Appropriate Assessments.
- Make recommendations on addressing the limited pool of expertise that exists (both within and outside of the Council), so that appropriate professional support mechanisms are available to assist developers in measurement of mitigation.

6.1.1.2 The cost of this consultation service was funded from the 2021/2022 LDP budget.

6.1.2 Nutrient Management Officer

6.1.2.1 It was recognised that the creation of a full-time dedicated post and resource within the authority (including supplemental Officer time) to 'head up' a co-ordinated response to phosphates and the Nutrient Management Team was critical. A Nutrient Management Officer was recruited by the Council and has been in post since 30th August 2021. The Nutrient Management officer will lead a strategic response to the challenges and opportunities presented by the phosphate guidance. It is anticipated that this post will evolve as the Authority advances its response.

6.1.3 The 'Big Tent Event' Approach

6.1.3.1 Building on the experiences in Somerset, it was recognised that one of the most important aspects and roles for the Local Authority would be to raise awareness and facilitate discussion between stakeholders. A stakeholder engagement event was held on 21st October, 2021, facilitated by Ricardo, and introduced by Cllr. Mair Stephens, Deputy Leader of the Council. A range of stakeholders attended, and a constructive debate was held on potential solutions and complexities of implementation. It is intended that a Stakeholder Forum is created consisting of attendees and other relevant stakeholders that are able to contribute

towards solutions. A Terms of Reference document, which includes membership, will be created and ratified. It is envisaged that there will be a key role for elected representatives to lobby and raise awareness.

6.1.4 Challenging inconsistencies

6.1.4.1 The Council recognised that there remained a number of areas where greater clarity was needed from the NRW following their issuing of guidance. Furthermore, it was felt that clarity was required in regards potential inconsistencies in the interpretation of the Habitat Regulations by Natural England and NRW. Officers have challenged these inconsistencies through procurement of legal advice, information sharing of legal advice procured by neighbouring LA's, and through legal opinion procured through the Planning Officers Society for Wales (POSW). Further points of clarity have been obtained via NRW officers, discussion and information sharing with various LA's, officer attendance at the all-Wales SAC Rivers Planning Subgroup Meeting, expression of views at an Oversight group and at attendance at ALGE Phosphate sub group.

6.1.4.2 In some instances, obtaining points of clarity has enabled the Authority to determine planning applications in SAC catchments e.g., permitting of extensions. However, there remain unanswered questions, and further legal advice, and HRA advice has been sought.

6.1.5 Representations to Welsh Government

6.1.5.1 Representations were made to the Welsh Government, in the form of a letter to the first Minister of Wales Rt Hon Mark Drakeford AS/MS on 14th June, 2021. A response was received from Julie James AS/MS Minister for Climate Change on 13th July, 2021.

6.1.6 Refined internal metrics

6.1.6.1 A review of applications affected by phosphates has been undertaken, and a 'RAG' rating system employed. The Arcus dashboard (an information management system deployed within planning services) now displays planning applications affected by phosphates, and separately identifies those applications whose determinations are solely dependent on a phosphate solution.

6.1.7 Website and Leading role

6.1.7.1 A phosphate page has been created on the Council's website. The page provides a candid reflection of the issues, as well as providing information for developers and interested parties. This includes links to further information, and a FAQ section. The media message seeks to recognise that the Authority is trying to find solutions.

6.1.7.2 It can be argued that the Council is leading the way in Wales in seeking to find a way forward. It has been determined at all-Wales SAC Rivers Planning Subgroup Meeting that the CCC website information is adopted by all LA's across Wales.

6.1.8 Briefing for Members

6.1.8.1 On 26th November 2021, Members were briefed by the Nutrient Management Officer on the implications of the NRW phosphate guidance for Carmarthenshire. A copy of the presentation and briefing notes have been circulated to all Members.

7.0 Work in progress

7.1 Phosphate Calculator

7.1.1 The development of a Phosphate calculator is underway, with an indicative completion date of January 2022. The methodology and underlying assumptions of the calculator have been presented to NRW and have met with their approval. It is intended that this calculator will provide a clear and transparent approach in establishing the level of phosphate loading resulting from a development proposal within the scope of planning control.

7.1.2 The Carmarthenshire phosphate calculator will be the first phosphate calculator developed and used in Wales. NRW have indicated a desire to enter into a procurement relationship with CCC in order to roll-out the Carmarthenshire calculator on an all-Wales basis. Exploratory discussions are underway. Neighbouring LA's have also expressed an interest in procuring and adopting the calculator. In the interests of expediency, their use would not be contingent on prior ratification by NRW.

7.2 Developer Guidelines

7.2.1 The development of mitigation guidelines to assist developers is underway and the indicative timeline for completion is January 2022. The guidelines will be presented to NRW for their approval. In the interests of expediency, their use would not be contingent on prior ratification by NRW.

7.3 Nutrient Management Board

7.3.1 It is proposed that the scope and structure of a Nutrient Management Board (NMB) such as those that have been utilised in those English affected areas may be established. The NMB will be responsible for producing and monitoring a catchment based Nutrient Management Plan for each of the affected areas. CCC have proposed that consideration is given to the scope and remit of an all-Wales 'umbrella NMB' to avoid duplication of resources amongst LA's.

7.4 Review of Council land assets

7.4.1 A review of council owned assets is underway. It is envisaged that this will identify opportunity sites on a large scale that offer economic feasibility of larger scale mitigation (e.g., wetland). It is also considered that this can identify strategically placed sites (e.g., Council owned land next to WwTW for reed bed creation). Council officers are currently working on providing land ownership and suitability details within the catchment areas.

7.4.2 It is likely that there will be a need to work with landowners to access privately owned land for mitigation due to the level of requirements for successful on ground delivery mechanisms. Any estimation of ha/dwelling is subject to evidential testing, and site-specific context of mitigation/offsetting measures.

7.5 Legal Interpretation of the Habitat Regulations

7.5.1 Further clarity on legal interpretation of the Habitat Regulations is required. Legal advice has been sought, however further clarity is required. Further advice has been sought in the form of specialist HRA advice. The Council is in the process of procuring this key specialist opinion. This advice will provide clarity on several areas of uncertainty. It will also enable the Council to determine an approach on the screening of additional wastewater. This has implications for the determination of commercial applications within the affected catchments.

7.6 Formation of Additionality Group

7.6.1 The Council has established a working group, chaired by Forward Planning Manager, in order to reach a common understanding between LA's in the interpretation of guidance. The Council is leading the group, and the HRA advice being procured (see 7.5.1. above) can inform any decision making. A Statement of Common Ground will form the basis of any commonality of interpretation, and the application of this understanding in Development Management.

7.7 Land Management Techniques

7.7.1 The importance of the farming sector within Carmarthenshire is acknowledged. A positive working relationship has been sought with representatives of the agricultural sector. A communication agenda in conjunction with neighbouring LA's and environmental groups is being developed. A mutually beneficial long-term working arrangement with landowners will be critical both in enabling nutrient neutral development to proceed, and in order to remediate the unfavourable SAC status of the affected rivers.

7.8 Green and Blue Infrastructure (GBI) Strategy

7.8.1 Nature-based systems are the most effective forms of mitigating and offsetting in phosphate pollution. This has been acknowledged within the GBI strategy as an area of need. The GBI Strategy will seek to identify opportunities to utilise GBI in addressing phosphate pollution in the affected catchments. The GBI Strategy will be available in March 2022.

8.0 Next Steps

The below sets out an indicative framework for implementation in chronological order:

8.1 Obtain specialist HRA advice on inconsistencies in the regulations

8.1.1 Obtaining clarification on key points of interpretation in respect of the Habitats regulations will enable the determination of applications within the authority, with implications for commercial operations and public services including schools. The difficulty that officers have encountered in securing this advice reflects the complexity of the matters involved, and the lack of subject specialism. This advice is now being pursued via Ricardo and will require an extension of contract.

8.2 Statement of Common Ground (SoCG) for the CCC led Additionality Group

8.2.1 Agreement with other Local Authorities in interpretation of the regulations (while not essential) is considered preferable. Once a specialist opinion on matters of uncertainty has been obtained, a SoCG will between LA's can be produced.

8.3 Publication and distribution of phosphate calculator

8.3.1 The indicative completion time for the phosphate calculator is January 2022. Ricardo technical officers are working on a method of avoiding some of the more complex modelling that would place a burden on single dwelling applications.

8.3.2. There will be a need to determine remuneration options and terms of use of the phosphate calculator amongst other SAC affected LA's. There is a clear advantage to using consistent calculations amongst neighbouring Authorities whereby river SAC's cross Authority boundaries. Pembrokeshire and Ceredigion have indicated a desire to acquire the CCC phosphate calculator. Whilst NRW has indicated a desire to roll-out the use of the Carmarthenshire phosphate calculator on an all Wales basis, this has not progressed beyond preliminary discussions.

8.3.3 While CCC officers (in conjunction with Ricardo) will seek ratification of the calculator from NRW, the publication and use of this key resource will not be a pre-requisite for its use.

8.3.4 The publication of the phosphate calculator will be resource intensive initially. There will be a need for awareness raising, along with an education programme and support.

8.3.5 It is proposed that the calculator is utilised initially on a pilot project at a scale that builds confidence in the efficacy of the calculator and the successful on ground delivery of nature-based systems.

8.4 Development Management

8.4.1 Further communication with applicants on phosphate issues, and requests for extension of time, will need to be made. There is a desire amongst SAC affected LA's to begin to refuse phosphate applications rather than hold in abeyance. It is anticipated that the publication of the phosphate calculator in January will render this option unnecessary for CCC.

8.4.2 In respect of any invitation of submissions of Neutrality Assessments from landowner/site proponents of revised LDP allocations within the affected areas, an efficient process for the consideration and assessment of planning applications along with their submitted proposals for mitigation/offsetting needs to be established. Consideration needs to be given to appropriate professional support mechanisms available to assist developers in submission of mitigation applications, and additional resource requirements of the authority.

8.5 Phosphate Stakeholder Forum

8.5.1 Following the Stakeholder Engagement Event, the establishment of a Phosphate Stakeholder Forum with ToR's will be made in order to implement solutions.

8.6 Review of Council land assets

8.6.1 Whilst there may be opportunities for mitigation on a site by site / case by case basis, it is clear that a high-level strategic approach to mitigation will be required longer term. In order to facilitate this, regional and pan Wales approaches should be adopted through shared approaches and integrated working. There is a need to identify opportunity sites on a large scale that offer economic feasibility of larger scale mitigation, and to also identify strategically placed sites e.g., Council owned land next to WwTW for reed bed/wetland creation. There is a need for support from CCC records team to providing land ownership details in the areas concerned.

8.6.2 There is an opportunity for synergistic interventions to address a number of the Authority's corporate and regulatory objectives including renewable energy, conservation, carbon sequestration, provision of amenity land and air quality. The Green and Blue Infrastructure Strategy and Ten Towns Initiative are noted. It is recommended that a co-ordinated response to maximise the benefit to be obtained from Council land assets should be considered, in collaboration with Corporate Property.

8.7 Catchment Scale Nutrient Management Board (NMB)

8.7.1 Overview and Governance

Note: the following in relation to the prospective governance arrangements for the prospective NMB's is subject to ongoing discussion with a view to identifying transparent and effective processes.

8.7.1.1 It is recommended that delegated powers be given to the Director of Environment to establish a Tywi Nutrient Management Board, with delegation to agree terms of reference for the group and prepare a Nutrient Management Plan. It is further recommended that CCC joins the membership board for the Teifi NMB, the Cleddau NMB and the Wye NMB. This is to ensure compliance with the Authority's duties to enhance the environment under the Environment (Wales) Act 2016 and to support sustainable development objectives in Carmarthenshire.

8.7.1.2 Consideration needs to be given to the proper constitution of the NMB including ToR. In order to mitigate against legal risk to the Authorities involved accountability and delivery agreement considerations will need to be incorporated. This is particularly important in different regulators and cross border agreements. A MoU is proposed at this stage.

8.7.1.3 While a regional/sub regional Board has been considered, a board at a catchment level is preferable in order to define a strategy that is proportionate to the scale of the problem and also that accounts for the spatial issues that will determine where in the catchment actions should be targeted. This spatial issue, which is likely to manifest as areas of each SAC catchment where more actions are required relative to other areas of the catchment, will have an influence on who in an NMB is going to have to take more or less responsibility for issues within a catchment.

8.7.2 Membership of NMB

8.7.2.1 The majority of the Tywi catchment falls within the CCC boundary, and therefore Carmarthenshire would be largely responsible for developing and implementing actions for this catchment. Similarly, Ceredigion County Council would form the lead LA for the Teifi, Pembrokeshire for the Cleddau, and Powys for the Wye.

8.7.2.2 In this way an Authority's role in an NMB for these catchments reflects the areas that are under their 'jurisdiction' to respond to causes of notable contributions to nutrient problems

8.7.2.3 The Council (as in Carmarthenshire County Council) would be Chair and offer Secretariat for the NMB for the Tywi. This report advises Cabinet that the Cabinet Member for Planning in conjunction with the Director of Environment will establish a NMB for the Tywi and undertake in conjunction with that board preparation of a Nutrient Management Plan for the Tywi. The Board itself will contain those bodies with regulatory responsibility for the condition of the Tywi – CCC (Responsible for local development plans, local planning decisions, environmental health (including monitoring private package treatment works and cess pits) and Sustainable Drainage Approval Body (SAB) consenting sustainable drainage in almost all new development.), Ceredigion County Council, Powys County Council, NRW, Dŵr Cymru and Welsh Government (Responsible for defining agricultural standards required for receipt of farming subsidy – the Sustainable Farming Scheme.)

8.7.2.4 The Board will contain both Members and Officers. The intention is to then support this with two further groups – a key stakeholder group with representatives from interest groups such as the National Farmers' Union, the Farmers Union for Wales, Afonydd Cymru and local Fisheries groups and a technical officers group with officers from the regulatory bodies.

8.7.3 Remit of NMB

8.7.3.1 The remit of a proposed sub regional NMB would be to ensure nutrient neutral development within the affected catchments, whilst also addressing the unfavourable conservation status of the SAC's (statutory responsibility of the LA as the competent authority) It is recommended that the extent to which the NMB is accountable for these requirements is

laid out in ToR and MoU Documents. The primary mechanism for achieving this will be through the preparation and delivery of the Nutrient Management Plan.

8.7.3.2 It is proposed that these overarching requirements are attained through;

- (i) Ensuring the formulation of a Nutrient Management Plans (NMP) for each river SAC catchment.
- (ii) Producing a delivery agreement for mitigation interventions, including infrastructure development and land use changes.
- (iii) Providing advice on policy implications, and measures that can be adopted in a LDP to account for neutrality requirements.
- (iv) Work with the Technical Support Groups, Stakeholder Forum and regulators to overcoming barriers to implementation in the agricultural and developmental sectors
- (v) Utilising the key resource developed by Carmarthenshire County Council, the phosphate calculator.
- (vi) Credit trading
- (vii) Facilitating transformative outcomes taking into full account the environmental, economic and social implications of interventions on a catchment scale.

8.7.4 Overarching Wales NMB

8.7.4.1 An overarching Wales NMB is considered important to eliminate unnecessary duplication of resources and time, act as an information and resource sharing, and provide a vehicle for cross border catchment agreements. The Council have proposed that an overarching Wales board is necessary to endure the following:

- (i) Providing leadership and coordinating an overarching strategy for each of the NMP's.
- (ii) Acting as a vehicle for addressing future needs such as may arise from any further water quality and neutrality guidelines such as Marine SAC's, Nitrogen, Ammonia, and Methane and facilitate an expedited response to the complexities of nutrient management.
- (iii) In addition to the NMP's the NMB will be responsible for securing legal opinions, and HRA advice, to ensure compliance with relevant Water, Agriculture and Environmental legislation including the Habitats Regulations and Water Framework Directive. Ensuring a commonality of approach in the interpretation of the regulations between LA's wherever possible. Accounting for differences of interpretation where they occur, and management of the implications on shared catchments where relevant.
- (iv) Formulating and updating of communication responses.
- (v) Ensurance of commonality in and guidelines.
- (vi) Establishment of a national approach to nutrient credit trading.

8.7.5 Awareness Raising

8.7.5.1 There is a need for continued engagement with public bodies, and further representations to Welsh Government, and Senedd Members. This may be assisted by securing Cabinet support for the selection of Member 'Champion(s)' to assist in lobbying, constructive engagement with the agricultural sector and dissemination of information.

8.7.6 Technical Officer Group

8.7.6.1 Establishment of a Technical Officers Group consisting of officers from the regulatory bodies, to support the NMB in conjunction with the Stakeholder Phosphate Forum.

8.7.7 LDP Policy

8.7.7.1 At a strategic level, there will need to be an assessment of headroom data and potential future County-wide implications.

8.7.7.2 There is likely to be a requirement to identify large scale mitigation measure to enable the financial feasibility of offsetting.

8.7.7.3 Other interventions could include identifying land next to WwTW's for reedbeds. Criteria will need to be set for selecting nature based systems such as performance, cost, maintenance requirements and site conditions to identify the right intervention for the site specific context. Furthermore, there may be a requirement to allocate mitigation / offsetting land in the Development Plan. A further evidential facet would be to review the cost of mitigation / offsetting within a viability context.

8.7.7.4 The establishment of a credit trading scheme would be with a view to facilitating development. As part of this, there would be key operational requirements such as legal agreements, maintenance contracts etc. It should be noted that mitigation would need to be provided in perpetuity.

8.7.7.5 The Development Plan may require the inclusion of a water policy requirement for new developments to be built with a 100l/p/d water efficiency standard, and use of water harvesting systems.

8.7.7.6 A key step will be to determine the implications for Carmarthenshire as a result of the review of Appropriate Assessment (AA) permits of WwTW's. The last review of consents by NRW on WwTW was conducted in 2009/10. They were therefore reviewed against old conservation objectives. A new review by NRW is underway to determine if the current Phosphate stripping permits are adequate. There will be administrative implications for the Revised LDP to facilitate a AA of WwTW if the NRW review of consents is not taken by the time the deposit LDP is reviewed. CCC will therefore have to conduct the review themselves, an aspect not commonly undertaken by LA's as the usual procedure is for a LA to adopt the AA conducted by NRW. This is important, because many of the permitted WwTW are in those urban areas of the County where the largest quantum of development is likely to go.

8.7.7.7 In terms of developing a policy mechanisms, there will be a need to consider a structured format to optimise opportunities to meet multiple Corporate objectives in any

mitigation strategy. Such objectives can include net zero, amenity land (economic regeneration) air quality, biodiversity and habitat restoration and flood alleviation.

9.0 Financial Considerations

9.1 Overview

9.1.1 There are inevitable resource implications attached to a response to an area of such complexity. In addition to likely need for future staffing, there remains a number of complex areas that need addressing. In the absence of a leadership response by NRW/WG to these complexities the cost will need to be borne by Carmarthenshire in order for the Authority to make a fully informed decision on a number of issues.

9.1.2 Additional consultancy advice has been sought. The following projections are provided to inform the budgetary needs for 2022-2023. It should be noted that these are estimates.

Anticipated Consultancy requirements

HRA specialist advice	£15,000
Site specific mitigation/offsetting consultancy	£25,000
	<hr/>
	£40,000

Credit trading system

Administrative resource (Core budget)

LDP

HRA review of WwTW P permits £30,000

Legal Costs

Nutrient Management Boards £10,000

Mitigation legal and maintenance agreements (Cost to be borne by applicant)

Total Projected Budgetary needs 2022-2023 £80,000

Figure 3 Projected Budgetary Needs 2022-2023

9.2 Credit trading system - Council owned assets

9.2.1 DCWW are investigating a potential all-Wales credit trading systems. There are efficiencies of scale to be made by a centralised administrative body responsible for the establishment, administration, and legality agreements necessary in establishing and monitoring a credit trading system. However, any offsetting/mitigation for a development must remain in the catchment of that development. The use of council owned assets for mitigation will allow the Authority to meet its development and housing needs in affected areas. However, the sale of the credits will also generate capital reserves for the Authority.

9.2.2 Any use of Council owned assets should examine the opportunity to stack benefits on mitigation land with biodiversity and carbon mitigation. Working in these additional facets should not increase the complexity of the scheme but presents an opportunity to add additional benefits.

10.0 Further information and contact

10.1 Further information is available from the Council's Forward Planning Section.