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Preliminary Ecology Appraisal and Shadow Habitats Regulations Assessment



The Cornish Seal Sanctuary, Gweek

Disclosure

The information, opinion, and advice which I have prepared and provided is true and has been prepared and provided in accordance with the CIEEM's Code of Professional Conduct and the British Standard for Biodiversity –Code of Practice for Planning and Development (2013). I confirm that the opinions expressed are my true and professional bona fide opinions.

SWE

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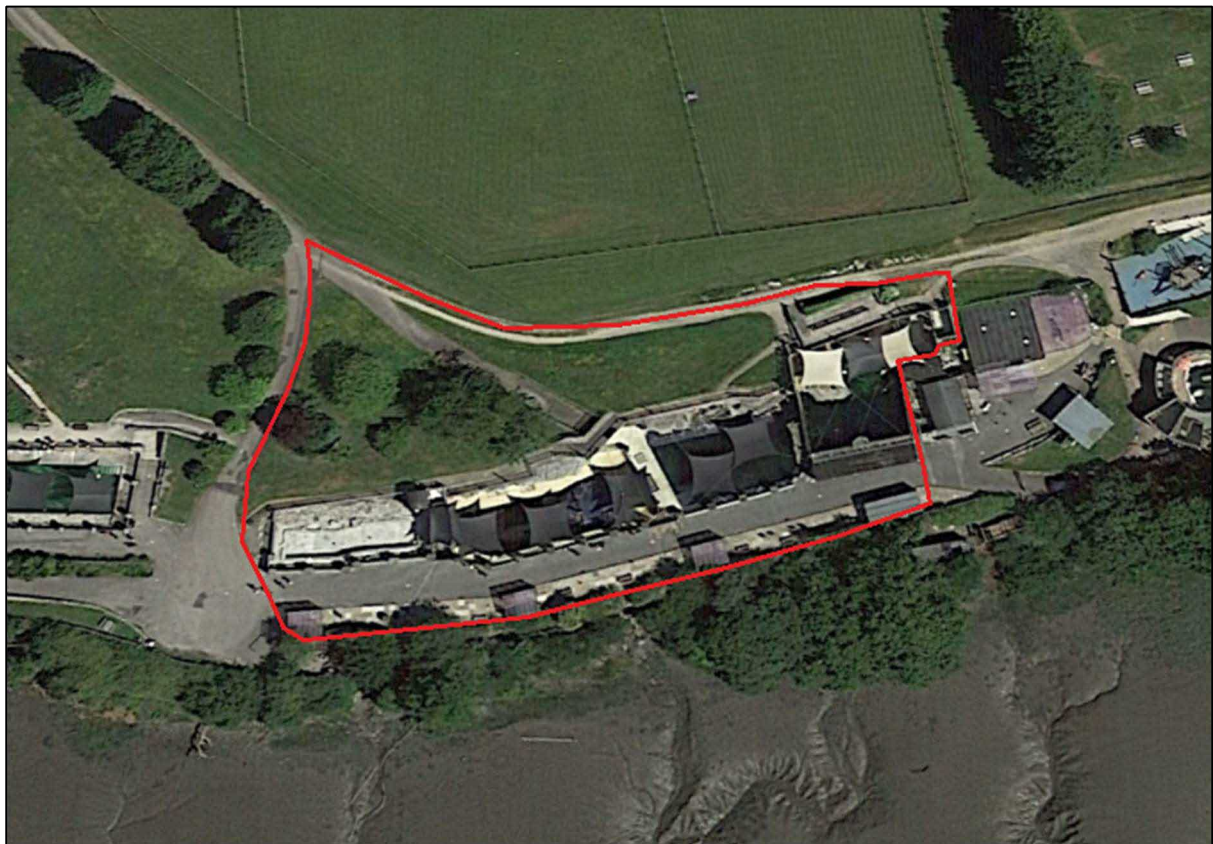


1.0 INTRODUCTION

1.1 Background

SWE was commissioned to undertake an ecological appraisal of a plot of land (the 'Site') at The Cornish Seal Sanctuary, Gweek, Helston, Cornwall (Ordnance Survey grid reference: SW710261; Figure 1). The appraisal was required to inform a planning application to replace four existing resident pools to better accommodate the resident animals, improve rehabilitation capacity and provide an improved visitor experience.

Figure 1. Approximate area of the Site (GoogleEarth 2020).



The pre-application advice (Cornwall Council Ref: PA22/00703/PREAPP0 dated 23rd May 2022 stated:

The site is on the banks of the river and the development during the construction phase has the potential to cause harm to the watercourse such that it is considered that a Shadow HRA (Habitat Regulation Assessment) should be carried out to assess the impact of the development and whether this can be mitigated and to ensure that there is no impact upon the watercourse.



If the size of the scheme is a major development (which it appears to be from my measurement of the plans), then you would need to provide a 10% uplift in Biodiversity in accordance with the Council's Biodiversity Net Gain requirements. A large portion of the site is already developed such that the ecology of the area to be lost is acknowledged to be limited such that if you could ensure additional landscaping/planting elsewhere on the site this would offset the harm. You would need to complete the Biodiversity Metric which would identify the areas lost and inform what needs to be replaced.

1.2 Report Purpose

The purpose of this report is to:

- provide an ecological assessment through consideration of a Preliminary Ecological Appraisal (PEA);
- identify the ecological constraints in relation to the proposed development;
- assess the potential impacts on the adjacent SAC and to provide mitigation measures to alleviate any impacts identified through a shadow HRA;
- identify the mitigation measures which may be required to ensure compliance with nature conservation; and
- identify enhancement and compensation measures which could be incorporated into the conversion design, in line with local and national planning policy. This includes the calculation of a Biodiversity Metric.

This report has been written in accordance with the guidance produced by the Chartered Institute of Ecology and Environmental Management (CIEEM) 2017¹.

1.3 Report Lifespan

In accordance with CIEEM guidance² this report, and the results of the ecological survey contained within, remains valid for 12 months.

¹ CIEEM (2017) *Guidelines on Ecological Report Writing*. Chartered Institute of Ecology and Environmental Management, Winchester.

² CIEEM. 2019. On the Lifespan of Ecological Reports and Surveys. Advice Note. April 2019.



1.4 Author

The author of this report, Dr S. Holloway, has over twenty-five years' professional experience of ecology, environmental management, and nature conservation in the private, public, and voluntary sectors. He has worked extensively throughout the UK on projects relating to bats, including wind farms, quarries, and residential/industrial development. Dr Holloway is a full member of the Chartered Institute of Ecology and Environmental Management (CIEEM) and is a Chartered Environmentalist (CEnv).

All work was undertaken in accordance with the CIEEM recommendations, the most up-to-date and relevant survey guidance available at the time (Bat Conservation Trust 2016), and in compliance with BS:42020:2013 Biodiversity. Code of Practice for Planning and Development.



2.0 RELEVANT LEGISLATION³ AND NATIONAL PLANNING POLICY

2.1 Legislation⁴

2.1.1 Conservation of Habitats and Species Regulations 2017

The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) transpose Council Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Flora and Fauna (Habitats Directive) into English law, making it an offence to deliberately capture, kill or disturb⁵ wild animals listed under Schedule 2 of the Regulations. It is also an offence to damage or destroy a breeding site or resting place of such an animal (even if the animal is not present at the time). Species include hazel dormouse *Muscardinus avellanarius* and all bats.

The Habitats Regulations 2017 will continue to implement the Habitats Directive and certain elements of the Birds Directives in England. The Habitats Regulations 2010 have been amended ten times since they were last consolidated (in 2010).

2.1.2 Wildlife & Countryside Act 1981

The Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way Act (CRoW) 2000 and the Natural Environment and Rural Communities Act (NERC) 2006, consolidates and amends existing national legislation to implement the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) and Council Directive 79/409/EEC on the Conservation of Wild Birds (Birds Directive), making it an offence to:

- Intentionally kill, injure or take *any* wild bird or their eggs or nests (with certain exceptions) and disturb any bird species listed under Schedule 1 to the Act, or its dependent young while it is nesting;
- Intentionally kill, injure or take any wild animal listed under Schedule 5 to the Act e.g. hazel dormouse, great crested newt, all bat species, and all reptile species;

³ Please note that the summary of relevant legislation provided here is intended for general guidance only. The original legislation should be consulted for definitive information.

⁴ Please note that the summary of relevant legislation provided here is intended for general guidance only. The original legislation should be consulted for definitive information.

⁵ Disturbance, as defined by the Conservation of Habitats and Species Regulations 2010, includes in particular any action which impairs the ability of animals to survive, breed, rear their young, hibernate or migrate (where relevant); or which affects significantly the local distribution or abundance of the species.



- Intentionally or recklessly damage, destroy or obstruct any place used for shelter or protection by any wild animal listed under Schedule 5 to the Act;
- Intentionally or recklessly disturb certain Schedule 5 animal species while they occupy a place used for shelter or protection;
- Pick or uproot any wild plant listed under Schedule 8 of the Act (not applicable for the Site as no species listed on the Schedule were found); or
- Plant or cause to grow in the wild any plant species listed under Schedule 9 of the Act (not applicable for the Site as no species listed on the Schedule occur).

2.1.3 *Natural Environment & Rural Communities (NERC) Act 2006*

The NERC Act 2006 places a duty on authorities to have due regard for biodiversity and nature conservation during the course of their operations.

Section 41 of the Act requires the publication of a list of habitats and species which are of principal importance for the purpose of conserving biodiversity. The Section 41 list is used to guide authorities in implementing their duty to have regard to the conservation of biodiversity.

The Section 41 list includes several bat species, dormouse, hedgehog *Erinaceus europaeus*, slow worm *Anguis fragilis*, grass snake *Natrix natrix*, and common toad *Bufo bufo*.

2.2 National Planning Policy

The National Planning Policy Framework (NPPF)⁶ sets out guidance for local planning authorities and decision-makers in how to apply planning policies when drawing up plans and making decisions about planning applications. Along with Government Circular 06/05⁷, the broad policy objectives in relation to the protection of biodiversity and geological conservation in England through the planning system are set out.

Paragraph 175 of the NPPF deals with habitats and biodiversity in relation to planning applications. With respect to this assessment the following parts of paragraph 175 apply (in part):

⁶ Department for Communities and Local Government. 2019. *National Planning Policy Framework*.

⁷ Office of the Deputy Prime Minister. 2005. Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System. ODPM Circular 06/2005.

a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; and

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

The above, along with local planning policy, aims to maintain and enhance biodiversity through the full considerations of important sites, habitats, and species in any planning decisions. Adverse impacts on such features are to be avoided, or appropriate mitigation and compensation must be implemented to reduce the scale of the impacts. In addition, development proposals should, wherever possible, incorporate opportunities to enhance biodiversity as part of good design.



3.0 METHODOLOGY

3.1 Desk study

A review of statutory designated sites⁸ within 0.5 km of the Site was conducted in accordance with CIEEM guidance. Online data was accessed from Natural England's MAGIC⁹ website.

Relevant documents associated with the Fal & Helford Special Area of Conservation (SAC) were consulted (English Nature. Fal & Helford. European Marine Site. English Nature's advice given under Regulation 33(2) of the Conservation (Natural Habitats & c.) Regulations 1994. January 2000, and associated maps).

3.2 PEA

The PEA consisted of a Phase 1 Habitat Survey. The survey was conducted on the 27th June 2022 with an update walkover on 27th November 2023. The field methodology was based on the Joint Nature Conservation Committee (JNCC, 2010¹⁰) advice.

The survey consisted of a search for field signs of and habitats suitable for those protected or conservation priority species that were deemed relevant at the Site. This included an assessment of tree potential for bat roosts and observational searches for evidence of nesting birds.

3.3 Limitations

This report is based on the evidence recorded at the Site at the time of the surveys.

The scope of the habitat survey did not attempt to quantify the absolute number of plant species present within the Site and did not include a survey for lower plants. This is in accordance with best practice guidance for Phase 1 Habitat Surveys.

⁸ Statutory designated sites include those protected under national or international legislation, such as Sites of Special Scientific Interest (SSSI).

⁹ <http://www.natureonthemap.naturalengland.org.uk/magicmap.aspx>

¹⁰ Joint Nature Conservation Committee. 2010. Handbook for Phase 1 Habitat Survey. A Technique for Environmental Audit.



The ecological appraisal did not include a search for Tree Preservation Orders (TPO's) or Conservation Area status.

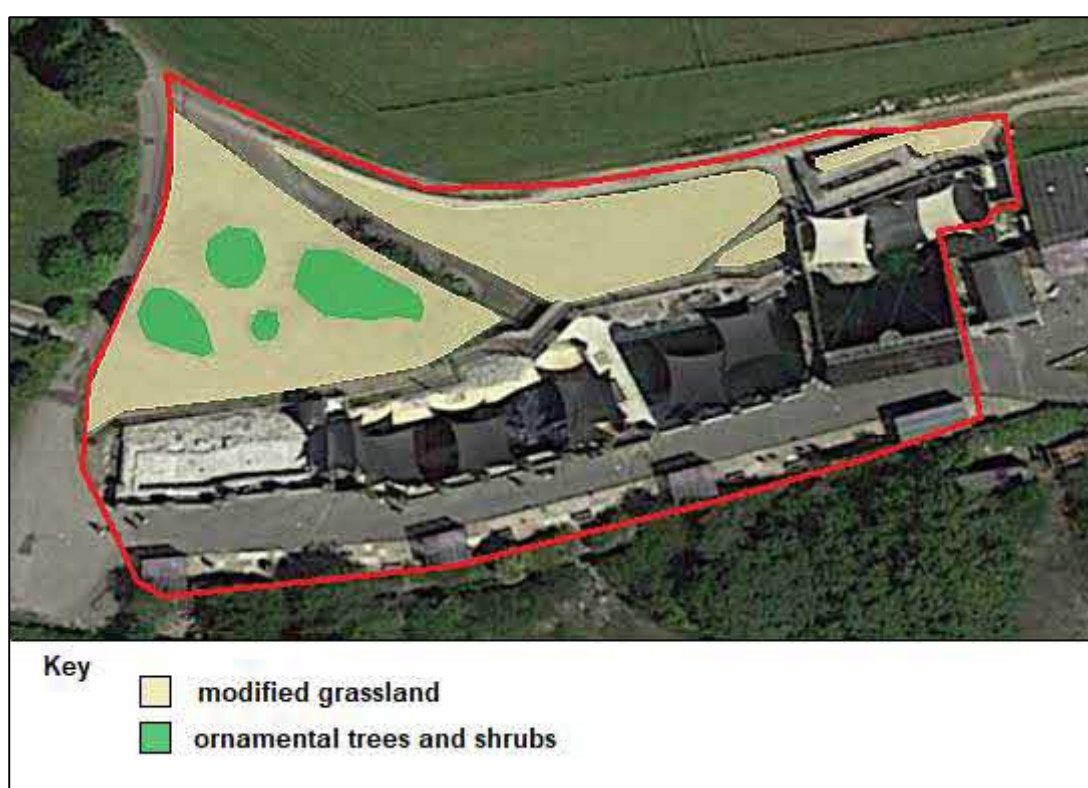


4.0 RESULTS OF THE PEA

The Site was 0.32 ha in extent and consisted of amenity grassland (0.06 ha) with specimen ornamental trees and shrubs (0.02 ha) and hardstanding, recovery tanks, and small buildings attached to the tanks (0.24 ha).

The hardstanding, tanks, and associated structures (Figure 3) had no/negligible ecological value. The features were not suitable for roosting bats or nesting birds due to their structure and very high levels of disturbance from staff and visitors.

Figure 2. Location of grassland and shrubs/trees within the Site.



The amenity grassland (Figure 4) was mown to a short turf and was of negligible ecological value. It consisted of a typically sown sward with commonplace forbs such as dandelion *Taraxacum officinale*, covers *Trifolium* sp., and daisy *Bellis perennis*. There were several small ornamental trees and shrubs growing within the grassland areas and these may be used by breeding birds (although no nesting activity was seen during the survey).

Figure 3. Area of hardstanding and tanks, looking west.

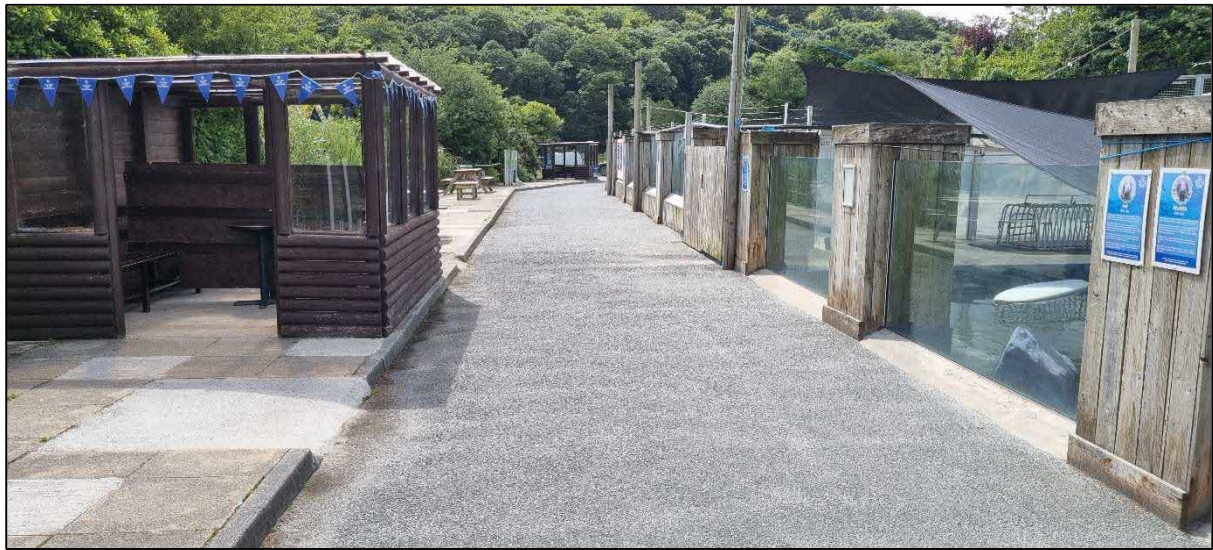
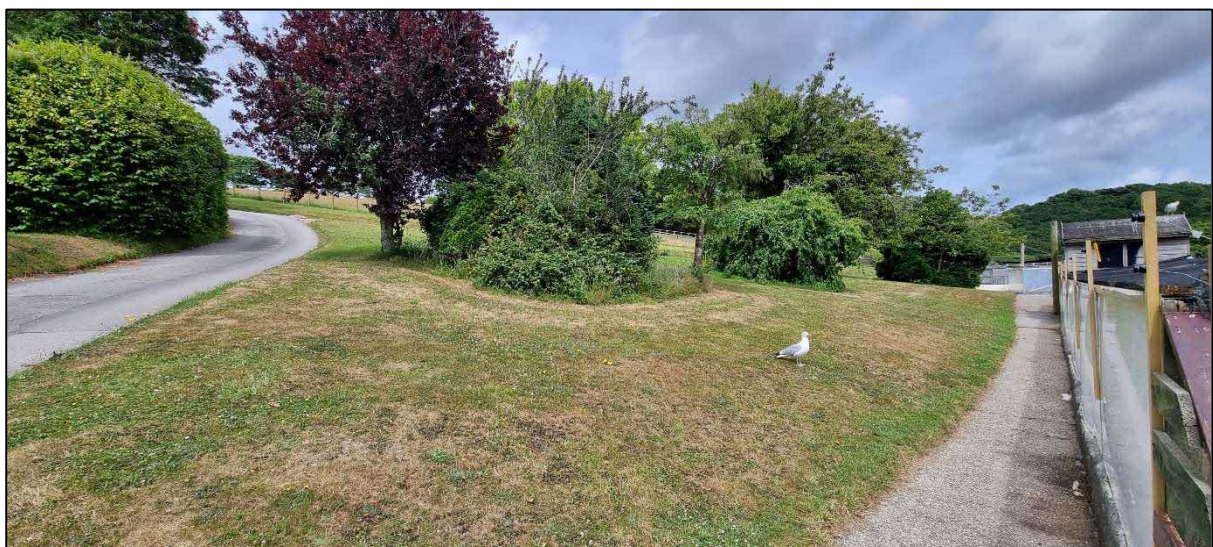


Figure 4 The amenity grassland area –looking east.



Using the Biodiversity Metric v4.0 (Natural England) the Site contained 0.52 Habitat Units (HU) consisting of Modified Grassland in a Poor condition [0.12 HU], Introduced Shrub [0.04 H], and trees in Moderate condition [0.36 HU]).

4.1 Species

The survey inspected the Site for evidence of habitats being suitable to support protected / notable species.



4.1.1 Mammals

Bats

There were no buildings or trees within or adjacent to the Site suitable to act as bat roosts

The Site which was small in extent and predominantly hardstanding and tanks. The Site was of negligible value for foraging or commuting bats.

Bats are therefore not considered further within this assessment.

4.1.2 Nesting birds

Birds could breed within the shrubs and trees within the Site. Were these shrubs and trees to be removed to facilitate the development there could be disturbance and destruction of active bird nests.

4.1.3 Reptiles

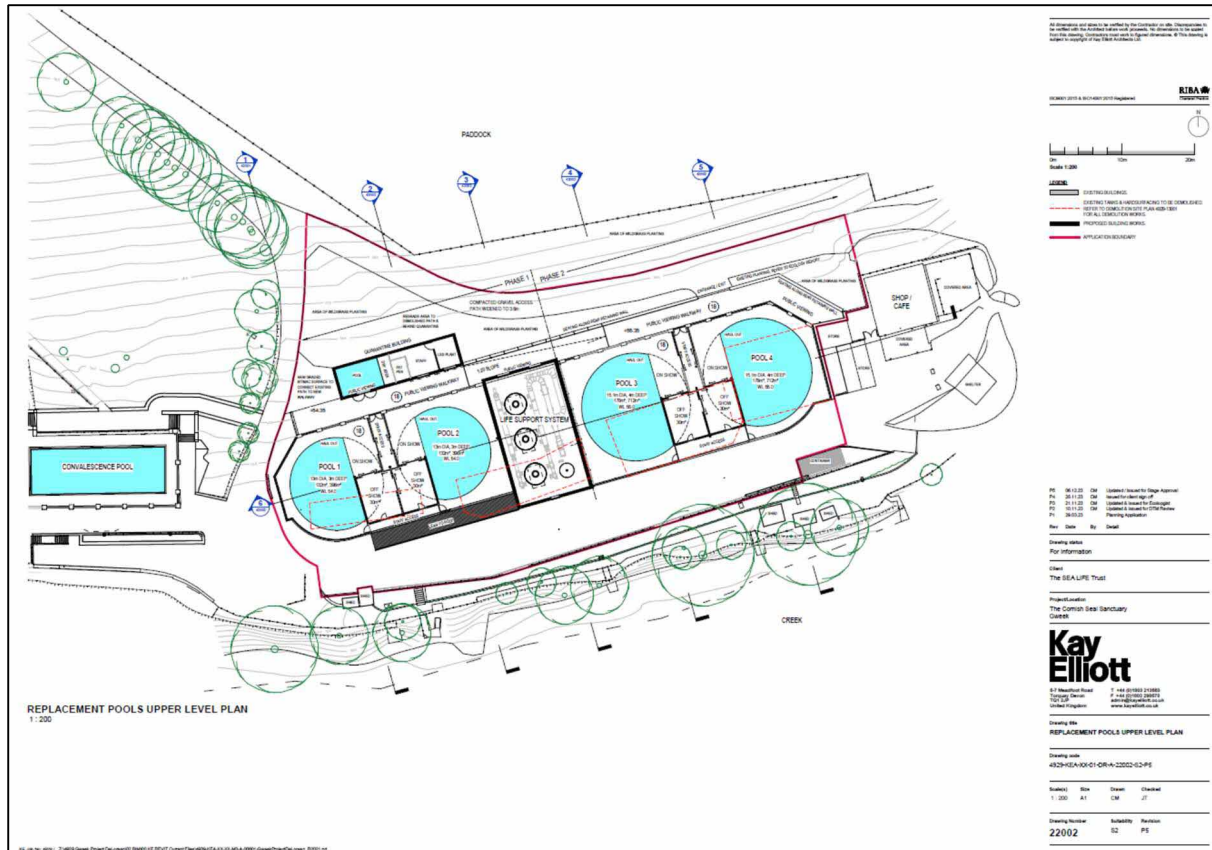
The habitats present within the Site were unsuitable for reptiles. Reptiles are not considered further within this assessment.



5.0 ASSESSMENT OF THE PEA

The results of the survey were assessed in accordance with current legislation and policy. This section identifies the potential effects of the development (Figure 5) on habitats and species. Recommendations to mitigate and compensate for ecological impacts are given where required. The shadow HRA is presented in Section 6.

Figure 5. Proposed replacement pool plan.



5.1 Habitat Impact and Mitigation

No habitats within the Site were representative of UK BAP Priority Habitats.

The footprint of the proposed development will primarily impact on hardstanding and tanks of no ecological value. In addition, a small area of modified grassland and ornamental shrubs and trees would be lost (0.08 ha). The loss of a small area of modified grassland and ornamental plants is not ecologically significant.

No mitigation measures are required for habitats. Compensation / enhancement measures will be required to demonstrate a biodiversity net gain.

5.2 Species Impact and Mitigation

The removal of any shrubs and trees capable of supporting nesting birds should not take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check for active birds' nests immediately before works commence. Any birds nesting will be left to complete breeding (i.e. until all dependant juveniles have fledged).

There are no other protected / notable species issues associated with the Site.

5.3 Biodiversity Enhancement

Opportunities for biodiversity enhancement have been sought within the development plan taking into account the location of the Site and its amenity use. Wildflower neutral grassland (0.054 ha) will be created, and 5 no. native trees planted. Using the Biodiversity Metric v4.0 this equates to a total net change of +0.05 HU (10.08% net gain).



6.0 SHADOW HRA ASSESSMENT

6.1 Legislation

A Habitats Regulations Assessment (HRA) refers to the several distinct stages of assessment which must be undertaken in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) to determine if a plan or project may affect the protected features of a habitats site before deciding whether to undertake, permit or authorise it. European Sites and European Offshore Marine Sites identified under these regulations are referred to as 'habitats sites' in the National Planning Policy Framework (NPPF).

The Habitats Directive aims to protect plants, habitats, and animals other than birds, and this is achieved in part through the creation of Special Areas of Conservation (SACs). Article 6(1) and (2) of the Habitats Directive require that Member States establish management measures for these areas, to avoid deterioration of their ecological interest. SACs include European Marine Sites, which are designated sites below Mean High Water.

Collectively, all formally proposed and fully classified or designated SACs (as well as Special Protection Areas [SPA] and Ramsar sites), form a pan-European Union network of protected areas known as Natura 2000. These are also referred to as European sites¹¹, and this term has been adopted throughout this report.

6.2 Habitats Regulations Assessment Process

The requirements of the Habitats Regulations with regard to the implications of proposed development projects are set out within Part 6 'Assessment of Plans and Projects' and specifically Regulation 61. The step-based approach implicit within Regulation 61 is referred to as a 'Habitats Regulations Assessment', which is the term that has been used throughout this report.

¹¹ Tyldesley, D. and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, September 2013 2013 edition UK: DTA Publications Limited.

It is incumbent on any public body (referred to as a competent authority within the Habitats Regulations) to carry out a HRA where a proposed development could have a significant effect on a European site. Competent authorities are required to record the process undertaken, ensuring that there will be no adverse effects on the integrity of a European site as a result of a proposed development.

6.3 Assessment Stages

The European Commission has developed guidance in relation to Articles 6(3) and 6(4) of the Habitats Directive¹², and this recommends a four-stage approach to addressing the requirements of these Articles.

Table 1 summarises the detail and legislative context for the four HRA stages. In subsequent sections further detail is provided about the method that has been adopted when completing Stages 1 and 2 (the stages relevant to this shadow HRA).

Table 1: Stages in the Habitats Regulations Assessment process.

Stage	Descriptor	Legislative Context
Stage 1: Screening	Assessment of whether a project is likely to have a significant effect on a Natura 2000 site.	Article 6(3) of the Habitats Directive Regulation 61(1) of the Habitats Regulations
	Stage 1A: The identification of European sites that are relevant to the assessment.	
	Stage 1B: The identification of underlying trends.	
	Stage 1C: The analysis of the proposed development to determine whether it is likely to have a significant effect on the integrity of any European site.	
	Stage 1D: The identification of other projects that, when considered in-combination with	

¹² European Commission (2001). Assessment of plans and projects significantly effecting Natura 2000 site. Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. Published November 2001.



Stage	Descriptor	Legislative Context
	the proposed development, are likely to result in significant effects.	
Stage 2: Appropriate Assessment	Consider the impacts of the proposed development on the integrity of a European site, alone or in combination with other projects and with reference to the site's conservation objectives. Consider measures to mitigate the identified impacts. Prepare an Appropriate Assessment Report for consultation with key stakeholders including Natural England.	
Stage 3: Assessment of alternative solutions	Re-assessing alternatives if effective mitigation proves impossible and develop / select a different alternative that does not harm site integrity. If no such alternatives exist, the process continues to Stage 4.	
Stage 4: Assessment where no alternative solutions exist and where adverse impacts remain	At this stage, projects which, after mitigation still have an adverse effect on the site(s) integrity should be refused. Assessing whether a project can be passed justified by 'imperative reasons of overriding public interest' (IROPI) or permitted on the grounds of human health, public safety or primary beneficial consequences for the environment.	Article 6(4) of the Habitats Directive Regulation 62 of the Habitats Regulations

Stage 1 – Screening

All planning applications which are not directly connected with, or necessary for, the conservation management of a habitat site, require consideration of whether the project is likely to have significant effects on that site. This consideration –typically referred to as the 'Habitats Regulations Assessment screening' –should consider the potential effects both of the project itself and in combination with other projects. Where the potential for likely significant effects cannot be excluded, a competent authority must make an appropriate assessment of the implications of the project for that site, in view of the site's conservation objectives. The competent authority may agree to the project only after having ruled out adverse effects on the integrity of the habitats site. Where an adverse effect on the site's integrity cannot be ruled out, and where there are no alternative solutions, the project can only proceed if there are



imperative reasons of over-riding public interest and if the necessary compensatory measures can be secured.

Stage 2 – Appropriate Assessment

If it is considered that the proposed development is likely to have a significant effect on the integrity of a European site, the requirements of Stage 2 are triggered. This stage considers the impacts of the proposed development on the integrity of a European site, alone or in combination with other projects. The assessment should consider the implications for the European site in view of the site's conservation objectives. If adverse impacts are identified, this assessment should also consider measures to mitigate the identified impacts.

If necessary, modifications to those proposals are identified to avoid any adverse effects on site integrity. If mitigation is not possible and adverse effects on a European site's integrity remain, the process must proceed to Stage 3.

6.4 Guidance on Procedure and Method

This report has referred to the following published guidance and good practice:

- Office of the Deputy Prime Minister Circular 6/2005, (Defra Circular 1/2005), Biodiversity and Geological Conservation: Statutory obligations and their impact within the planning system (although note that this be replaced with National Planning Practice Guidance to support the NPPF).
- Assessment of projects significantly affecting Natura 2000 sites Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (2001).
- Guidance on the Habitats Regulations Assessment of plans published by the Welsh Assembly⁵ and Scottish Natural Heritage in association with the Scottish Government⁶, (these methodologies are considered to be the most up-to-date and Natural England have not formally released equivalent guidance for English Planning Authorities).

6.5 Scope of Assessment

An important part of the HRA process is ensuring that Natural England is consulted to ensure that the scope of the assessment is appropriate for the purposes of discharging the

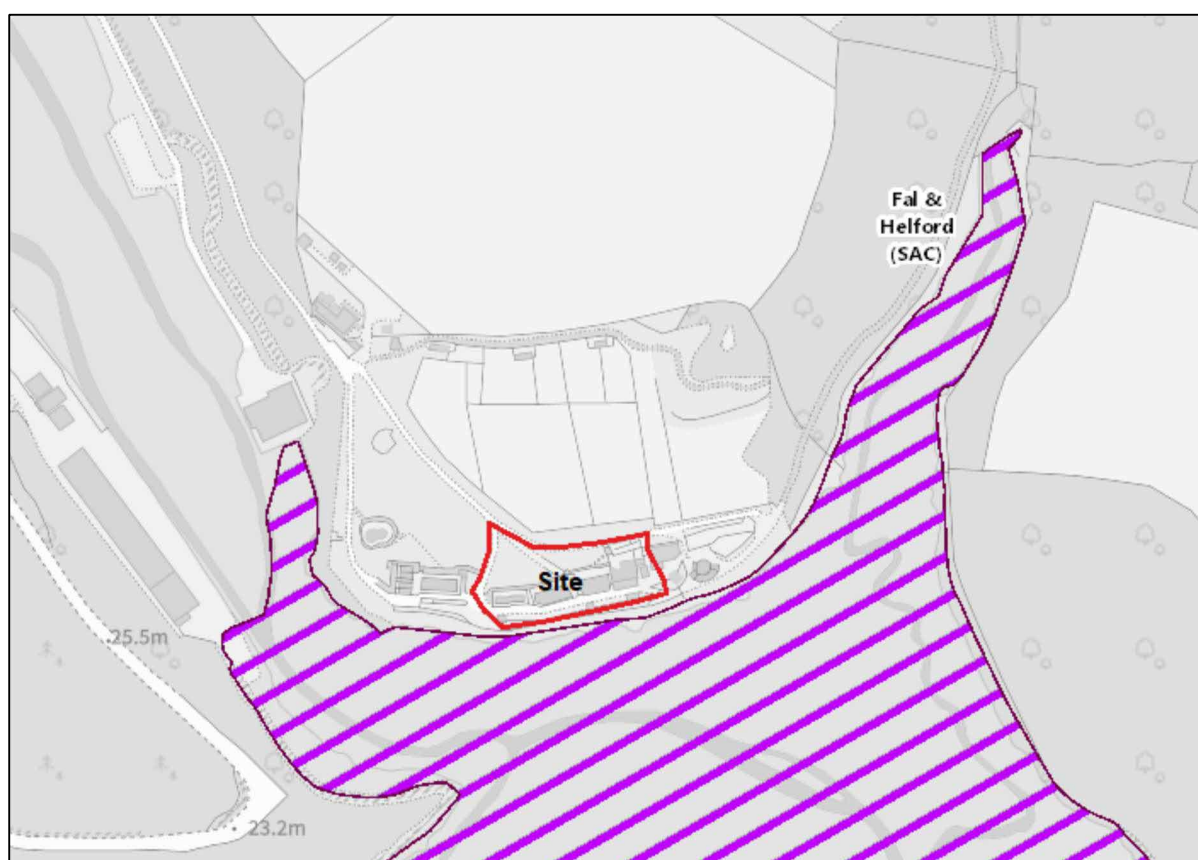


duties set out within the Conservation of Habitats and Species Regulations 2017 (as amended). HRA is an iterative process that aims to influence the development of a plan or project so as to ensure the ecological integrity of an affected European site is maintained.

6.6 Identification of relevant European sites

The Site lies to the immediate north of the Fal & Helford Special Area of Conservation (SAC). Figure 6 shows the location to the Site in relation to the SAC.

Figure 6. Site location in relation to the boundary of the SAC.



6.6.1 Qualifying features

The SAC is designated for the following features:

Annex I habitats that are a primary reason for selection of this site

- 1110 Sandbanks which are slightly covered by sea water all the time



This is a sheltered site on the south-west coast of England, with a low tidal range and a wide range of substrates resulting in biologically one of the richest examples of sandbanks in the UK. Sublittoral sandbanks are present throughout much of the ria system and Falmouth Bay. There are particularly rich sublittoral sand invertebrate communities with eelgrass *Zostera marina* beds near the mouth of both the Fal and Helford and in some channels of the rias, such as the Percuil River and Passage Cove. Of particular importance are the maerl (*Phymatolithon calcareum* and *Lithothamnion corallioides*) beds that occur in the lower Fal on St Mawes Bank, and the extensive areas of maerl gravel which extend throughout the Carrick Roads and Falmouth Bay. These are the largest beds in south-west Britain and harbour a rich variety of both epifaunal and infaunal species, including some which are rarely encountered, such as Couch's goby *Gobius couchi*.

- 1140 Mudflats and sandflats not covered by seawater at low tide

This area supports examples of sheltered intertidal mudflats and sandflats representative of south-west England and is particularly recognised for the importance of the species living in the sediments, including amphipods, polychaete worms, the sea cucumber *Leptopentacta elongata* and bivalve molluscs. Most of the shores of the Fal and Helford rias, and their upper reaches, are fringed by sandflats and mudflats. Owing to the sheltered nature of the site, the sediments are stable as well as being diverse, and include muds, muddy sand, and clean sand. These support particularly rich and nationally important sediment communities in the Fal/Ruan estuary, Percuil River and in Passage Cove, including beds of dwarf eelgrass *Zostera noltei* and diverse invertebrate communities.

- 1160 Large shallow inlets and bays

This site is a ria system in south-west England that supports a wide range of communities representative of marine inlets and shallow bays. The rias of the Fal and Helford have only a low freshwater input and as a result the area contains a range of fully marine habitats from extremely sheltered in the inlets to the wave-exposed, tide-swept open coast. There is a particularly diverse algal flora and a number of warm-water species are present. The area supports extensive and rich sediment communities, which include the largest and most south-westerly maerl *Phymatolithon calcareum* bed in the UK.

- 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)

The Fal and Helford is an example of saltmarsh vegetation in a ria (drowned river valley), a physiographic type restricted to south-west England and west Wales. There



is a narrow saltmarsh zonation typical of rias, from pioneer to upper marsh, and transitions to woodland where the fringing trees overhang the tidal river, an unusual juxtaposition of vegetation in the UK.

Annex I habitats present as a qualifying feature, but not a primary reason for selection of this site

- 1130 Estuaries
- 1170 Reefs

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

- 1441 Shore dock *Rumex rupestris*

A rocky-shore site supporting a large, dispersed population of shore dock *Rumex rupestris* near to the centre of its distribution in south-west England. Three sections of open coastline are included within the site, which when last surveyed (in 1999) supported 12 colonies and at least 34 plants. The site also holds extensive additional areas of suitable habitat.

Of the above Annex I habitats the Site is adjacent to an area of mudflats (Figure 7). Mudflats are the only receptor relating to the SAC that needs consideration with regard to the HRA.

6.6.2 Conservation objectives and potential causes of impact

The conservation objectives for the SAC are, subject to natural change, to maintain the Annex I habitats in favourable condition as per Table 1 of English Nature's advice¹³.

The proposed development would not directly impact the integrity of any of the features for which the SAC is designated, however there is potential, without mitigation, for indirect impacts to occur on the integrity of the SAC mudflats during the demolition and construction phases of the proposed development.

English Nature's summary of advice on operations states: *...the relevant and competent authorities for the Fal and Helford European marine site are advised to manage human activities within their remit such that they do not result in deterioration or disturbance through*

¹³ English Nature. Fal 7 Helford. European Marine Site. English Nature's advice given under Regulation 33(2) of the Conservation (Natural Habitats & c.) Regulations 1994. January 2000.



any of the following (note that only relevant causes of deterioration or disturbance are listed here in relation to habitats in the vicinity of the Site):

- Increased synthetic and/or non-synthetic toxic contamination
- Nutrient and/or organic enrichment and/or increases in turbidity

Table 2 of English Nature's advice lists the operation which may cause deterioration or disturbance to the SAC. Those which are relevant to this assessment are:

- Physical Damage Siltation (e.g. from run-off causing smothering)
- Toxic contamination (e.g. from oil spills)
- Non-toxic contamination (e.g. via nutrient enrichment from run-off)

6.6.3 Vulnerabilities

The Natura 2000 Standard Data Form for the SAC states:

The ria systems of the Fal and Helford Rivers and adjacent Falmouth Bay attract visitors and accommodate many commercial and recreational activities. Potential threats therefore include: additional usage of the area for deep water moorings; deep-water oil rig lay-up in Carrick Roads; increased pressure for recreational moorings and associated facilities; port development; oil pollution.

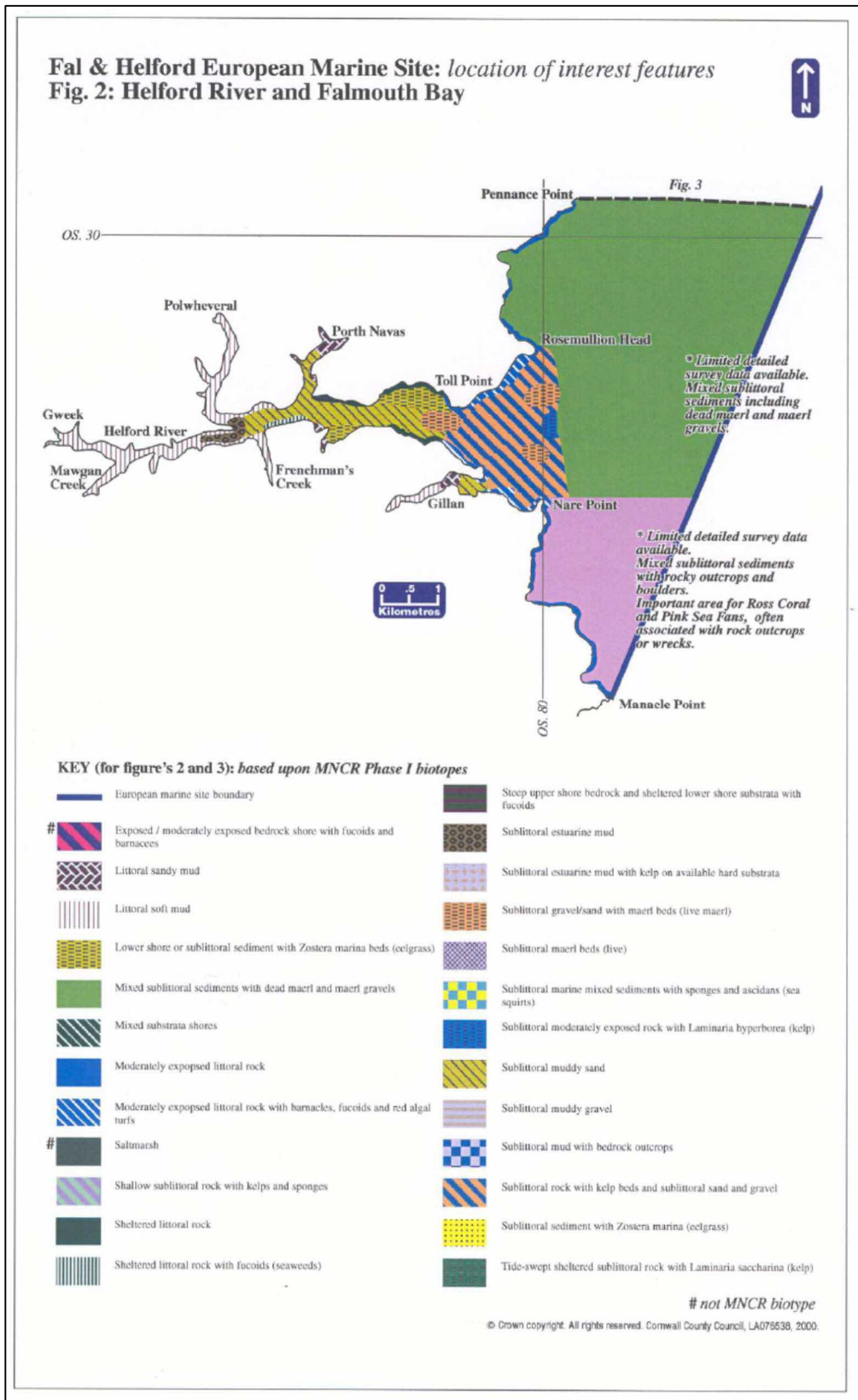
6.7 Screening for Likely Significant Effects

The term 'screening' is routinely adopted to describe the initial stage of the Habitats Regulations Assessment. The purpose of screening is to:

- Identify all aspects of the planning proposal that are not likely to have a significant effect on the SAC, either alone or in combination with other projects. These can then be screened out from further assessment.
- Identify those aspects of the planning proposal where it is likely to have a significant effect on the SAC, either alone or in combination with other projects. These aspects will require 'appropriate assessment' and mitigation measures may need to be introduced.



Figure 7. Location of SAC interest features.



6.8 Likely significant effects

Current guidance defines a ‘likely’ effect as one that cannot be ruled out on the basis of objective information. In the Waddenzee case the European Court of Justice provides further clarity on this point, advising that a project should be subject to appropriate assessment ‘if it cannot be excluded, on the basis of objective information, that it will have a significant effect on the site, either individually or in combination with other plans and projects’¹⁴. Therefore, ‘likely’ should be interpreted as a significant effect that, objectively, cannot be ruled out.

An effect may be significant if it undermines the conservation objectives for the SAC site. The assessment of whether a potential effect is significant for the site’s interest features must consider, amongst other things, the characteristics and specific environmental conditions of the site concerned. The Advocate General’s Opinion for the Sweetman case¹⁵ provides further clarification, stating that consideration of the likelihood of a significant effect is simply a case of determining whether the plan or project is capable of having a significant effect.

A second recent HRA judgment (Holoohan & Ors. v An Bord Pleanála, 7 November 2018, C - 461/17) has also been considered within this assessment. In summary this judgement provides further clarification about the scope of an assessment, requiring that all habitats and species associated with a European site must be considered (irrespective of whether or not they are qualifying features) if impacts on those habitats and species are liable to affect the conservation objectives of the site.

6.9 Refining the scope (screening out)

It is possible to screen out some potential sources of impact, on the basis that there is no potential mechanism by which an effect can occur, or an identified effect is not likely to be significant (in the absence of mitigation). The screening process uses the known data pertinent to the application site, which includes the following:

¹⁴ See paragraph 45 of European Court of Justice case C-127/02 dated 7th September 2004, ‘the Waddenzee ruling’.

¹⁵ Sweetman v. An Bord Pleanála, Case C-258/11, CJEU judgment 11 April 2013.



- The PEA
- Fal & Helford SAC information and records
- MagicMap records data.

6.10 The Proposal

The proposal is to replace the four existing resident pools with new pools plus infrastructure. The majority of the proposal falls within the footprint of the current hardstanding and pool area with a slight infringement on the modified grassland, ornamental shrubs and trees to the north.

During the clearance and construction phases there is potential for pollutants to enter the SAC in particulate (dust) and liquid (fuel, oil, chemicals, and liquid cement) form. This could impact on the integrity of the mudflats feature relating to the SAC leading to highly localised negative impacts on the fauna and flora associated with the mudflats. However, the high rates of daily dilution within the estuary would rapidly disperse any potential dust or liquid pollutants to non-toxic levels.

Preventative measures will nonetheless need to be employed to ensure pollutants do not enter the SAC and thus impact on its conservation status. These measures should be via a Dust Management Plan (DMP) and through Pollution Prevention Measures. An overview of what these should include is presented within Appendix 1. Where such measures are put in place during the clearance and construction phases no significant impacts on the integrity of the SAC are anticipated.

The types of activity associated with the proposal will be the same as existing with the rehabilitation of seals and visitor presence. No direct or indirect impact on the SAC mudflats would occur and any fauna within the SAC would have become habituated to the presence of visitors. Therefore, the operation phase of the proposal would not cause a significant impact on the integrity of the SAC.



7.0 CLOSURE

This report has been prepared by SWE Limited with all reasonable skill, care, and diligence, and taking account of the manpower and resources devoted to it by agreement with the client. Information reported herein is based on the interpretation of data collected and has been accepted in good faith as being accurate and valid.

The information presented in this report provides guidance to reduce the risk of offences under UK law. However, SWE is not a legal practice and disclaims any responsibility to the client and others for actions that lead to offences being caused, whether or not the guidance contained in this report is followed. Interpretation of UK legislation is presented in good faith; however, for the avoidance of doubt, we recommend that specialist legal advice is sought.

This report is for the exclusive use of The Cornish Seal Sanctuary; no warranties or guarantees are expressed or should be inferred by any third parties. This report may not be relied upon by other parties without written consent from SWE.

SWE disclaims any responsibility to the client and others in respect of any matters outside the agreed scope of the work.



Appendix 1.

Dust Management Plan

Effective site management regarding dust emissions will be ensured by the formulation of a dust management plan (DMP) for the site. The key features of the DMP are:

- the specification of a site policy on dust;
- the identification of the site management responsibilities for dust;
- the development of documented systems for managing site practices and implementing management controls; and
- the development of means by which the performance of the dust management plan can be assessed.

The aim is to ensure good site management by avoiding dust becoming airborne at source. This will be done through good design and effective control strategies.

At the planning stage, the siting of construction activities and storage piles will take note of the location of the sensitive receptor (the SAC) and prevailing wind directions in order to minimise the potential for significant dust nuisance. In addition, good site management will include the ability to respond to adverse weather conditions by either restricting operations onsite or using effective control measures quickly before the potential for nuisance occurs:

- During working hours, technical staff shall be on site and available to monitor dust control methods as appropriate;
- It is the responsibility of the contractor at all times to demonstrate full compliance with the dust control conditions herein; and
- At all times, the procedures put in place will be strictly monitored and assessed.

The dust minimisation measures shall be reviewed at regular intervals during the construction phase to ensure the effectiveness of the procedures in place and to maintain the goal of minimisation of dust through the use of best practise and procedures. In the event of dust nuisance occurring outside the site boundary, site activities will be reviewed, and satisfactory procedures implemented to rectify the problem.

Given the nature of the site it would be expected that the major source of dust would be during site clearance and construction. To reduce fugitive dust from the access road bowsers will be



made available during periods of dry weather throughout the construction period. Any hard surfaces will be swept to remove mud and aggregate materials from their surface.

Land clearing / earth-moving during periods of high winds and dry weather conditions can also be a significant source of dust. During dry and windy periods, and when there is a likelihood of dust nuisance, a bowser will operate to ensure moisture content is high enough to increase the stability of the soil and thus suppress dust.

Pollution Prevention Measures

The developer will locate the areas of high risk early in the process. Areas of high risk include:

- fuel and chemical storage areas;
- refuelling areas;
- vehicle and equipment washing areas; and
- the site compound.

A well-defined construction footprint will be maintained throughout clearance and construction activities in order to minimise disturbance to the marine environment. No materials will be stored near to the foreshore.

During construction, good working practices will be employed to eliminate risk of exposure to oil, chemicals and other harmful materials e.g. cement, and to limit the potential for runoff:

- Fuel, oils, and chemicals will be stored on an impervious base with a bund.
- Oil spill mats and absorbent granules will be provided within the excavators where practical, and in strategic locations within the site for use in an emergency oil spill.
- Fire extinguishers will be provided in all vehicles.
- An onsite training programme for pollution control will be developed with the site operatives and plant operatives to contain any spillage.
- A record of any spillages will be maintained.
- Regular toolbox talks will be undertaken regarding pollution and environmental issues with the workforce.
- An oil and waterproof holding tank for containment of used spill kits and absorbent granules etc. will be installed within the site.
- Plant will be refuelled outside of the site and away from the foreshore.
- Any onsite plant left overnight will be parked with their safety systems activated to prevent unauthorised use.
- Any static pumps on the site will be installed within a bund to prevent fuel/oil contamination.



- Any oils or any other substances will be secured within a lockable store.
- Cement trucks and plant will not be permitted to wash out on site.

During the operational phase the Site will not be used for the storage of any chemicals which could cause harm if an accidental spillage were to occur e.g. fuel, oil, and paints.



