



# Herefordshire Minerals and Waste Local Plan

Preparing the Plan Report –  
Update pre-Examination

**February 2022**

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## 1. Introduction

### 1.1 Background and Purpose of the Report

- 1.1.1 This Report provides an overview of the representations received during the Regulation 19 consultation of the Publication Draft MWLP (the 'Publication Draft MWLP' or the 'Plan') and an overview of the response to them in preparing the Plan for Examination.
- 1.1.2 It also addresses key legislation and policy matters, in relation to European legislation of relevance to the MWLP and the recently updated National Planning Policy Framework.

#### **Consultation on the Publication Draft Minerals and Waste Local Plan**

- 1.1.3 Regulation 19 consultation on the Publication Draft MWLP (dated January 2021) and its accompanying evidence base documents occurred over the period 12 April 2021 to 24 May 2021.
- 1.1.4 Due to Covid restrictions, no face to face consultation events were held. However, a video presentation was made available on the council's website to provide an overview of the policies and proposals of the Publication Draft MWLP and how to get involved in the consultation.
- 1.1.5 The documents that accompanied the Publication Draft MWLP are listed at paragraph 1.1.6 of the report titled Preparing the Publication Draft MWLP (originally drafted in March 2020 and updated August to December 2020).
- 1.1.6 In addition, interactive mapping of the Publication Draft MWLP proposals was made available on the Council's website.

#### **Next Steps for the Publication Draft Minerals and Waste Local Plan**

- 1.1.7 The next step for the Publication Draft MWLP is to be submitted for independent Examination by a Planning Inspector. The Publication Draft MWLP will be submitted for Examination in the same form as it was made available for Regulation 19 consultation.
- 1.1.8 In preparing for Examination, the Council has reviewed the Regulation 19 representations received and considered whether any changes should be made to the MWLP prior to its adoption. Any changes that the Council considers would be appropriate will be made available for discussion at the Examination through a schedule of Main Modifications and Minor Changes.
- 1.1.9 The Main Modifications are considered throughout this Report and, along with the Minor Changes, are set out in the Schedule of Main Modifications and Minor Changes proposed pre-Examination, February 2022.

### 1.2 European Legislation

- 1.2.1 At the time of writing this Report, July/August 2021, the UK remains in a transition period of negotiation with the EU to finalise trading deals and working arrangements. Consequently, the details of such arrangements are not known and existing legislation remains in place and applicable across the UK.

- 1.2.2 It remains the council's opinion that it is not unreasonable to expect the wide ranging environmental legislation relevant to the MWLP to remain in place for the foreseeable future. This is the approach adopted in preparing the MWLP and is not changed.
- 1.2.3 Consequently, existing EU legislation is referenced throughout this Report and the other evidence base documents, and will remain within the MWLP itself unless it becomes clear that it should be removed.

## 1.3 National Planning Policy Framework, 2021

- 1.3.1 On 20 July 2021, the National Planning Policy Framework (NPPF) was revised. The key change is an increased focus on design quality, not only for sites individually but for places as a whole. Terminology of the NPPF is more precise on priorities of protecting and enhancing the environment and promoting a sustainable pattern of development.
- 1.3.2 Paragraph 11 of NPPF 2021 has been amended in relation to the expectation for plan-making, now stating that:
- ' a) all plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects;*
- b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:*
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'*
- 1.3.3 The Publication Draft MWLP is considered to align with the updated policy text within NPPF 2021, including in relation to matters such as design of reclamation schemes and access to open space providing wider benefits for nature and climate change.
- 1.3.4 Paragraph 22 retains the expectation that strategic policies should look ahead for a minimum 15 year period from adoption, but also suggests that to accommodate larger scale developments, policies might be set within a vision that looks to at least 30 years in the future. This extended period has not been utilized in the MWLP. Not least because the ability to forecast future demand for minerals resource and waste treatment capacity becomes less robust the longer time period is considered. Both the Need Assessments recognise the gaps in the available data for both minerals and waste, and this further undermines the potential for credible longer range forecasting.
- 1.3.5 In any event, there is a recognised need for new mineral reserve and waste treatment capacity in the near future. The MWLP has been prepared to address these recognised needs and deliver to that demand. Substantial change is to be expected within the waste sector over the forthcoming years as the approach moves from one of managing discarded materials to one which underpins a circular economy, avoiding waste production and enabling resources to be kept in use for as long as possible. It is likely to take a decade to be able to fully recognise

what the future waste industry will look like, and the potential for this to impact upon aggregate production (such as would be relevant within Herefordshire).

- 1.3.6 Consequently, whilst it is recognised that minerals and waste developments can have a lifetime substantially in excess of 15 years, the current plan period is considered to be appropriate. The MWLP will be subject to annual monitoring and review at least every five years; these checkpoints provide the ability to identify elements of the MWLP that would need revising at an earlier date than the proposed plan period. Finally, NPPF 2021 paragraph 221 recognises that the longer plan period does not extend to plans that have reached Regulation 19 consultation in any event.
- 1.3.7 As with its predecessors, NPPF 2021 does not address waste directly, but does retain section 17 concerned with minerals. The text at this section has remained much the same, albeit with two changes of particular relevance to the MWLP.
1. Paragraph 210 of NPPF 2021 (paragraph 204 in NPPF 2019) confirms that the use of Mineral Consultation Areas are primarily for use in two tier authorities. This is discussed further in this Report at section 2.4.
  2. Paragraph 215 of NPPF 2021 (paragraph 209 in NPPF 2019) does not contain the text in relation to unconventional hydrocarbons (which was quashed by ministerial written statement of 23 May 2019). This matter was recognised in preparing the Publication Draft MWLP and consequently it is proposed that paragraph 3.3.9 of the Plan is deleted.
- 1.3.8 To recognise the increased focus on beauty and good design, though not directed at minerals and waste development *per se*, a modification has been proposed to include reference to the National Model Design Code within section 3 of the Plan.
- 1.3.9 Finally, the definition of green infrastructure as presented in the MWLP is proposed to be updated to repeat that provided in NPPF 2021.

## 1.4 Matters that have not prompted a proposed edit

- 1.4.1 All representations received have been considered carefully, although not all have led to proposed edits to the Plan. Some of these have been considered in this report, primarily because they have been a part of considering all of the elements of a received representation.
- 1.4.2 All the comments received will be addressed in a full table of Regulation 19 representations with Herefordshire Council responses. A key role of the Examination is to explore those matters that are important to determining if the MWLP satisfies the tests of soundness and should go on to be adopted. The Examination provides the opportunity to discuss the representations received.

## 1.5 Format of the Report

- 1.5.1 This Report has just one further section:
- **Section 2** considers the key matters raised in the Regulation 19 representations that have led to edits being proposed to the MWLP.

## **2. Key Matters raised in Regulation 19 consultation Representations that have Led to a Proposed Edit**

### **2.1 Introduction**

- 2.1.1 26 submissions were made in response to the Publication Draft MWLP. Each of the representations received has been reviewed and carefully considered.
- 2.1.2 This Report does not address each one but focusses on those representations that are considered to raise key matters in relation to the Plan to be submitted; i.e. those that the Council considers would be appropriately addressed through Main Modifications to the MWLP.
- 2.1.3 This Report cannot confirm the changes that would be made to the MWLP, but it does identify the edits that are proposed. The Main Modifications and Minor Changes proposed to be considered through the Examination are presented at Tables 1 to Table 3 in the Schedule of Main Modifications and Minor Changes proposed pre-Examination, February 2022.
- 2.1.4 The key matters that have been identified, and which are consequently addressed further within this Report, are:
- River Wye SAC and the River Lugg SAC catchment;
  - Impacts on heritage assets;
  - Minerals;
  - Waste;
  - Key Development Criteria; and
  - Other Matters.

### **2.2 River Wye SAC and the River Lugg SAC catchment**

- 2.2.1 In its representation, Natural England (NE) was broadly supportive of the Publication Draft MWLP, however it did seek clarity over the term 'betterment' as used within the Plan.
- 2.2.2 NE also raised concerns in relation to the Habitats Regulations Assessment. A meeting was held with NE on 8 July 2021 at which all of the comments made in its representation were discussed.
- 2.2.3 It was agreed that the term 'betterment' would be proposed to be removed from the MWLP, and the policy wording proposed to be changed to achieve 'at least nutrient neutrality'. In addition, the glossary of the MWLP has been updated to include 'nutrient' and 'nutrient neutrality'.
- 2.2.4 There was some discussion with NE about the geographic area over which the test of achieving 'at least nutrient neutrality' could be extended. NE's position is that this test can only be applied in projects that would link to a SAC catchment that was failing its water quality objectives. To this end, it was seeking only for the test to be applied to those projects located within the vicinity of the catchment of the River Lugg SAC. The approach within the MWLP has been to require nutrient neutrality from development proposals within the River

Wye SAC generally; it is not limited to the River Lugg catchment. This is an ongoing area of discussion with NE, with the current approach retained within the MWLP.

- 2.2.5 It was also agreed to ensure that wording in regard to the Habitats Regulations Assessment likely to be required for each planning application, for example within the key development criteria, would be proposed to be strengthened.
- 2.2.6 Modifications are also proposed to section 3 of the MWLP, to update the Plan with the latest guidance on this matter that is available on the Herefordshire Council website.
- 2.2.7 The Environment Agency has made extensive comment on nutrient neutrality and phosphorous recovery. Whilst it is generally supportive of policies W3 and W4, some of these comments look to address matters that fall beyond the remit of the MWLP or misunderstand the context within which the text is provided.
- 2.2.8 The MWLP has been prepared to play a material role in terms of reducing nutrient release into the River Wye SAC (in its totality), including through the provisions set out in policies W3 and W4; its consideration of the potential for phosphate release from minerals and waste developments and the inclusion of key development criteria to address the issues in conjunction with proposed development. No further edits to the text are considered necessary.

## 2.3 Impact on heritage assets

- 2.3.1 In its representation, Historic England (HE) welcomes the additional site assessment work that has been undertaken and recommends that the method used for the assessment of heritage assets should be in line with that set out in HE's Advice Note 3. As is noted within the Supplementary Sites Report<sup>1</sup>; this is the approach that was used in considering all of the sites in more detail.
- 2.3.2 HE also raises a number of concerns in relation to the sites that are proposed to be allocated, including an objection to the extension at Leinthall Quarry and recommends that further assessment should be undertaken in the form of detail Heritage Impact Assessments (HIA) for the mineral sites: Leinthall; Wellington; Upper Lyde and Shobdon. The National Trust has also objected to the proposed extension to Leinthall Quarry.
- 2.3.3 An HIA of each of the mineral sites is currently (throughout July and August 2021) being undertaken by Herefordshire Archaeology (Herefordshire Council's archaeological service).
- 2.3.4 The HIA for the extension proposed at Leinthall Quarry has already been completed and made available to HE to provide comment. The Leinthall Quarry Extension HIA conclusion comments that:

*'There is no indication that any expansion of the quarry will directly affect any known archaeological heritage assets within the proposed expansion area.'*

*'... However, from certain viewpoints the setting impact upon Croft Ambrey Hillfort is considered to be of moderate-high, (albeit already highly compromised by the presence of the existing quarry).'*

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<sup>1</sup> Supplementary Report to the Spatial Context and Sites Report, March 2020 and updated

*It may be possible to further limit / or obscure some of the direct viewpoints from Croft Ambrey Hillfort by future vegetation management on the hillfort and by planting extra tree cover in the close environs to the proposed quarry site. However, due to the height of the hillfort above the proposed area and existing quarry it will not be possible to completely mitigate the visual impact.*

*It should be stressed that the existence of the present workings at Leinthall Quarry does already present a large setting issue for the same heritage assets that have been considered within this assessment and future setting issues from the proposed extension should be measured against the setting and visual impacts that have already existed for over seven decades.'*

- 2.3.5 It is concluded that the Leinthall Quarry Extension remains an appropriate allocation, albeit that some amendment to the wording of the key development criteria is proposed in the Schedule of Main Modifications and Minor Changes proposed pre-Examination, February 2022.
- 2.3.6 HE raises a number of concerns in relation to non-designated heritage assets, which it recognises '*can make a positive contribution to the character of our settlements and enrich our sense of place*'. HE advises that '*the views of your chosen specialist archaeological adviser are sought on these proposed allocation to confirm that the evidence base is sufficiently robust to ensure that any proposed allocation is deliverable in accordance with local and national planning policies*.'
- 2.3.7 The views of the council's Archaeology Adviser and Building Conservation Officer were sought in the preparation of the Publication Draft MWLP, including his advice on the wording that is currently included within the key development criteria. It is believed that the proposed allocations are deliverable and that few further edits to the text of the Plan are required.
- 2.3.8 HE also makes reference to palaeolithic archaeology and the potential for effect on water sensitive heritage assets to be more overtly recognised within the key development criteria. Proposed modifications to the key development criteria to incorporate these comments have been considered with Herefordshire Archaeology and are proposed in the Schedule of Main Modifications and Minor Changes proposed pre-Examination, February 2022.
- 2.3.9 HE also makes representations in regard to the proposed waste allocations and the potential impact on heritage assets. These allocations make use of land that is already allocated for Strategic Employment Areas or has already hosted some form of built development. In regard to the Strategic Employment Areas, particularly the Rotherwas Industrial Estate (Hereford Enterprise Zone), a substantial amount of heritage assessment work was previously undertaken to enable that allocation to be adopted.
- 2.3.10 The approach within the MWLP has been that these sites consequently provide appropriate locations for new waste treatment development, in principle. Each development proposal will need to demonstrate how it complies with all relevant policy, including that concerned with heritage. Consequently, the proposed allocations are appropriate and deliverable and do not pose an unacceptable risk of material harm to heritage assets. This matter has been discussed (again) with Herefordshire Archaeology, who continues to support this approach.
- 2.3.11 Representations have been received that text of the MWLP does not recognise the hierarchy of importance for heritage assets, and other environmental designations. This point has been addressed before and the approach remains the same. Hierarchies for designations are set



out in national policy and the addressed through policy of the Core Strategy. In short, it is not appropriate or necessary to repeat them within the MWLP; they will continue to apply to any development proposal submitted for determination.

## 2.4 Minerals

### Minerals Safeguarding Areas

2.4.1 Some respondents queried why the mapping in relation to mineral resource was different on the interactive mapping (provided on the council's website) to that provided in the MWLP consultation documents, principally Figure 7.

2.4.2 Figure 7 within the MWLP presents the Minerals Safeguarding Areas, including railheads. It is introduced by text at paragraph 6.1.12 of the Publication Draft MWLP:

*'Figure 7 presents the Minerals Safeguarding Areas for Herefordshire, incorporating: areas of reserve indicated by the British Geological Survey data; surface coal resource areas from the Coal Authority; currently consented quarries and their associated infrastructure; the operating rail head at Moreton-on-Lugg; and the disused railhead at Moreton Business Park. Figure 7 is available in its original A3 format at Annex A, with key policy details included in the interactive mapping available on the Herefordshire Council website.'*

2.4.3 Whilst the interactive mapping made available on the council's website did present mineral resource, allocated sites and preferred areas of search; it did not include the data layer for the safeguarding areas (including the railheads).

2.4.4 This will be amended prior to the Examination.

### Mineral Consultation Areas

2.4.5 Some respondents (particularly from the minerals industry) have objected to the absence of buffer zones around the minerals safeguarding areas and a minerals consultation area.

2.4.6 The approach to minerals safeguarding was comprehensively addressed in the Preparing the Plan Report<sup>2</sup> at paragraph 2.6. This approach has been corroborated in revised text in NPPF 2021 (at paragraph 210, bullet c) which confirms that the use of Mineral Consultation Areas is primarily for two tier authorities.

### Policy M2 Safeguarding etc

2.4.7 Some suggested edits were received in representations from the mineral industry to amend policy M2, to incorporate reference to economic viability and infrastructure associated with mineral workings.

2.4.8 These edits are proposed within the Schedule of Main Modifications and Minor Changes proposed pre-Examination, February 2022.

### Level of mineral provision within MWLP

2.4.9 Representations were received suggesting that the MWLP relies upon the existing levels of imported mineral. As explained in section 4 of the Preparing the Plan Report, this is not correct.

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<sup>2</sup> Preparing the Publication Draft MWLP – March 2020, updated August to December 2020

- 2.4.10 New text is proposed within section 6 of the MWLP to state that policies M3 and M4 have been drafted on the assumption that reserve in Herefordshire supplies 100% of the forecast demand. Reserve is used deliberately in this proposed modification, as only resource that has permission to be worked can be included in the landbank.
- 2.4.11 In addition, reference to the LAA is proposed to be added to the monitoring schedule presented at Table 3 of the MWLP.

## **Reserve/Resource**

- 2.4.12 Some respondent questioned whether the term 'reserve' had been used correctly throughout the Plan, in some cases the correct term would be 'resource', for example paragraph 2.4.2.
- 2.4.13 The MWLP has been checked throughout; it was found that the term 'reserve' has been used when 'resource' would be the correct option. This has been amended in the Schedule of Main Modifications and Minor Changes proposed pre-Examination, February 2022.

## **2.5 Waste**

### **Reinforcing the Circular Economy and benefits of resource management**

- 2.5.1 The Environment Agency, and other respondents sought greater clarity in regard to the circular economy and policy intent in terms of climate change. Some edits have been proposed throughout the Plan to address these comments. For example paragraph 2.3.7 of the MWLP now includes reference to household waste recycling centres providing an opportunity for items to be reused, alongside recycled or disposed of safely.
- 2.5.2 Whilst policy SP1 was generally supported, representations sought greater clarity in the wording used, not least in regard to delivering the circular economy rather than focussing on climate change. Representation also queried whether the MWLP went far enough to satisfy NPPF policy in regard to promoting the use of secondary and recycled aggregates.
- 2.5.3 The MWLP has been prepared to deliver the waste hierarchy and circular economy within Herefordshire, although these priorities also have to be balanced with enabling sustainable supply of mineral generally, which will continue to rely on raw mineral for the foreseeable future. The evidence base that underpins the minerals policies has considered the potential for secondary/recycled materials.
- 2.5.4 Policy SP1 is extending the remit of a development plan to look beyond just land use policy and setting out the actions that others can play in achieving the desired outcomes. This is explained in the supplementary text. The resource audit is also explained within the supplementary text, albeit the wording within the policy is proposed to be clarified.
- 2.5.5 New text is also proposed at the start of policy SP1, to make explicit reference to the potential for minimal use of primary materials.
- 2.5.6 The Environment Agency has made extensive comment on the Circular Economy and how it is addressed within the Plan. Many of these comments look to address matters that fall beyond the remit of the MWLP or misunderstand the context within which the text is provided. The MWLP has been prepared to enable the Circular Economy to be delivered within Herefordshire and further edits to the text are not considered necessary.

## **Policy W5**

- 2.5.7 Representation commented that policy W5 provides operators with no ability to undertake improvements at existing waste facilities.
- 2.5.8 This is recognised to be a potential limitation of policy W7 (and policy W1) but it is also the spatial strategy of the MWLP. If the edit proposed in the representation was added to policy, then it would apply to all existing operations, including those that are not well sited or well operated.
- 2.5.9 It remains within the developer's gift to demonstrate why development of the type proposed should be permitted even though there may be some conflict with development plan policy.

## **Policy W7**

- 2.5.10 Comment was received that policy W7 subsection 3 and 4 were not wholly clear.
- 2.5.11 These subsections are proposed to be reformatted within the policy to clarify the intent.

## **2.6 Key Development Criteria**

- 2.6.1 Some respondents questioned the purpose of the key development criteria, including whether they were intended to form part of policy or not.
- 2.6.2 The key development criteria have also been referenced in the site allocations (and preferred areas of search) policy and have consequently been an element of policy. Just prior to finalising the Publication Draft MWLP, regulations in regard to making public documents accessible to a wide range of potential readers were enforced. At that point in time, the key development criteria were only provided in the Allocated Sites Appendix, a pdf document that did not satisfy the relevant legislation.
- 2.6.3 In order to make the key development criteria available in an accessible format, but without breaking the flow of the MWLP, the decision was made to include them within the Plan but in a separate section, Section 9.
- 2.6.4 In order to ensure they remain accessible, Section 9 within the MWLP has been retained, but text referencing, and within, this section has been amended to make it clear that the key development criteria are an element of the policy within which they are stated.
- 2.6.5 The key development criteria themselves have been subject to some proposed modifications. These have been proposed in response to advice from statutory consultees and to ensure that each requirement set out in the key development criteria is clear.

## 2.7 Other Matters

### Introduction

2.7.1 Various other matters were raised in the representations received and have been amended in the Schedule of Main Modifications and Minor Changes proposed pre-Examination, February 2022.

### Reflecting the NPPF text in the MWLP

2.7.2 Some respondents (particularly from the minerals industry) objected to text within the MWLP, at paragraph 3.3.7, that summarised the NPPF and its advice in regard to National Parks and Areas of Outstanding Natural Beauty.

2.7.3 It is neither necessary nor appropriate to repeat national policy in the MWLP; the test is whether the Plan is consistent with it. The text in section 3 was provided for context and had been summarised to be relevant to Herefordshire where there are no National Parks and it is practicable to provide adequate aggregate landbank opportunities without development in the Areas of Outstanding Natural Beauty.

2.7.4 In any event, this paragraph is proposed to be amended as all waste development constitutes major development and most minerals projects will also fall within that category. The text 'as far as practicable' is also proposed to be included.

### Objectives

2.7.5 Representations identified that Objective 3 was missing from the Publication Draft MWLP. A modification has been proposed to reinsert this objective.

2.7.6 Representation sought Objective 11 to include specific reference to achieve a reduction in carbon as well as to mitigate and adapt to climate change. This amendment is included in Schedule of Main Modifications and Minor Changes proposed pre-Examination, February 2022.

### Policy SP2 and others

2.7.7 Prior to consultation on the Publication Draft MWLP, elected Members of Herefordshire Council requested various edits to the text of the Plan, including amending the policy test from 'shall be permitted' to 'will be supported'.

2.7.8 This edit was generally executed throughout the MWLP, but not entirely, which has left some inconsistency in the terminology used. The Schedule of Main Modifications and Minor Changes proposed pre-Examination, February 2022 presents edits to the policies where the wording needed to be made consistent.

### Herefordshire Council's Waste Strategy

2.7.9 At Cabinet meeting held on 29 July 2021, a new Integrated Waste Management Strategy was approved to be adopted, subject to call-in. This has led to a proposed update within section 3.2 of the MWLP.

2.7.10 The update is required to ensure that the context relevant to Herefordshire Council's waste strategy is up to date; no further change is required to the MWLP as the policy documents are aligned. This is not an unexpected outcome as the Council's Waste Management Team has been involved throughout preparation of the MWLP.

## **Edits to the Strategic Environmental Assessment, Sustainability Appraisal and Habitats Regulations Assessment**

2.7.11 In response to the Regulation 19 representations received, various edits have been made to these reports, some of which necessitated an amendment to the MWLP. These have been reported in the Schedule of Main Modifications and Minor Changes proposed pre-Examination, February 2022.

### **Typos and grammar changes**

2.7.12 Spelling and grammar edits that have been spotted and proposed to be amended are included in the Schedule of Main Modifications and Minor Changes proposed pre-Examination, February 2022.