

Date: 24 May 2021  
Our ref: 349461



Herefordshire Council

**BY EMAIL ONLY**

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Dear Ms. Gilson,

**Planning consultation:** Herefordshire Council Minerals and Waste Local Plan (MWLP) – pre-submission consultation

Thank you for your consultation on the above

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

## **THE CONSERVATION OF HABITATS AND SPECIES AMENDMENTS (EU EXIT) REGULATIONS 2019**

### **WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)**

Natural England welcomes the opportunity to comment at this stage of the Local Plan. We have reviewed the consultation document and provide comments that are most relevant to our interest in the Natural Environment.

Natural England generally welcomes the Herefordshire Minerals and Waste Local Plan. We have no substantial comments to make on the detail of the plan itself, but offer the following support to certain policies and topics raised.

However there are concerns regarding the Habitat Regulations Assessment, and we are unable to agree a conclusion of no adverse effect on integrity. Natural England advises that further clarification is required of certain policies and allocations. Amending the wording of the HRA report, as highlighted below, may help to clarify the proposed mitigation. We therefore provide advice with regard to the site allocations and the plan's compliance with the *Conservation of Habitats and Species Amendment (EU Exit) Regulations 2019*.

### **Minerals and Waste Local Plan**

#### Agricultural Waste

#### Para 7.2.27 and 7.2.28

We offer support to the references made here.

This includes a waste management method statement to be submitted with all applications for livestock unit(s) on agricultural holdings, and the agricultural sector contributing to achieving at least

nutrient neutrality. *“It is important that the agricultural sector makes a real contribution to achieving at least nutrient neutrality, if not betterment, in the River Wye SAC.”*

This reference is welcomed and encouraged.

#### Policy W3 – Agricultural Waste Management

*“Anaerobic digestion will be supported where its use is to manage only natural wastes generated primarily on the agricultural unit within which it is located.”*

Natural England generally supports this point.

Proposals in the River Lugg catchment do need to demonstrate nutrient neutrality. Therefore any proposals for anaerobic digestors that fall within the River Lugg catchment will need to consider the following;

If an application for a new or extension to an existing anaerobic digester plant is within the catchment of the River Lugg, your authority should consider the risk that the development will indirectly increase the amount of phosphates entering the designated site. If an increase in the catchment’s phosphate loads is considered likely then the implications of the proposals, along with any measures that may be implemented to alleviate that risk, should also be considered through an appropriate assessment.

#### Policy W4 – Waste water management

It is noted that this policy makes reference to nutrient neutrality. We would support and encourage proposals that contribute to nutrient neutrality as a form of mitigation. However, we do question the term ‘betterment’, and ask for further clarity on this statement.

#### **Habitats Regulations Assessment**

We offer the following advice in order to provide for potential revisions to the HRA to take account of further evidence.

The HRA relies on the Nutrient Management Plan (NMP), as strategic mitigation. Clarification is sought here. We accept that the NMP and the information within it can be referred to and used as part of the evidence base. . However following the clarification given by the [Coöperatie Mobilisation for the Environment cases](#) (Dutch Nitrogen case), the NMP cannot be relied upon as strategic mitigation because it does not have enough certainty to conclude that there are no adverse effect on integrity. The Dutch case applies to designated sites already in unfavourable condition due to nutrient enrichment. In this case that is the River Lugg part of the River Wye SAC.

The Dutch case clarified that an Appropriate Assessment (AA) may not take into account the benefits of conservation, preventative or other measures if the expected benefits of those measures are not “certain” at the time of the assessment. Because the NMP does not have enough certainty that actions will be delivered and targets achieved, it cannot be relied upon as strategic mitigation.

The Dutch case also clarified that where the conservation status of a natural habitat is unfavourable, the possibility of authorising activities which may subsequently affect the ecological situation of the sites concerned is ‘necessarily limited’.

The phrase ‘nutrient neutral or betterment’ has been used within the HRA. It is noted that this is used as part of Herefordshire Council’s position statement;

#### ***“In the interim -***

*On Natural England’s advice, there remains potential for a positive appropriate assessment, where it can be demonstrated that development is **nutrient neutral** or would lead to **betterment** to enable*

*development to proceed. Proposals will need to provide appropriate evidence of avoidance/mitigation measures. (Refer to Stage 2 of the Interim Plan for guidance)."*

The term betterment does not provide any certainty that proposals will be nutrient neutral. It is assumed that betterment would result in a proposal being an improvement compared to the current situation, however in some cases such an improvement will not be sufficient to demonstrate nutrient neutrality, meaning such cases will still result in an increase of phosphate. Within the Lugg catchment, this would be unacceptable, and mitigation measures to demonstrate nutrient neutrality would be required.

It is noted that Nutrient Neutrality has also been mentioned as mitigation for agriculture. The Nutrient Neutrality (NN) calculator that Herefordshire Council have produced is for housing. However any agricultural planning applications that would increase Phosphate do also need to offset that, i.e. be NN. Further work is required to fully understand this.

### Policy W3 – Agricultural Waste Management

We are unable to agree with the following statement;

***'All development proposals will be required to demonstrate delivery of a net reduction in nutrient discharges contributing to nutrient neutrality, or betterment, within the River Wye SAC.'***

Further clarity is required, to explain whether this statement includes proposals which fall within the Lugg catchment, a component of the River Wye SAC. We advise that betterment would not be adequate in the River Lugg part of the SAC and nutrient neutrality should be required.

### Para 5.20

The plan should clarify which parts of the River Wye SAC are failing. The River Lugg, which is part of the River Wye SAC, has not been mentioned.

We agree with the statement that phosphate discharge into the river is important. The River Lugg is already exceeding its targets for phosphate. However other pollutants which may end up in the river also need mitigating against. We would still expect mitigation for example, against surface runoff.

### Para 5.21

Reference is made to the Nutrient Management Plan. Clarification is required on whether this is referring to the River Wye or River Lugg. The latest advice from Herefordshire Council is outlined within their April 2021 position statement.

### Para 5.22

Further explanation is required here. The conclusion states,

*"Therefore, while the above policies and site allocations could result in some discharges/run-off to the River Wye, these are unlikely to adversely affect the integrity of the SAC because any discharges or run-off will not be high in phosphates."*

We are unable to agree with reasoning of ruling out adverse effects on integrity. There is no mention of River Lugg SAC, which is already in unfavourable condition and failing its conservation objective for phosphate. Any increase of phosphate, however small, cannot be permitted, as it would result in a HRA conclusion of adverse effects on integrity .

It is agreed that restoration to agriculture could result in phosphate discharge . However there does not appear to be any mention of any mitigation. We would recommend consideration of restoration to recreational use and/or green infrastructure.

#### Para 5.26

The wording of this paragraph needs to be improved. Nutrient neutrality has been mentioned, but it is not clear whether this is in relation to the River Wye or Lugg. The term betterment implies that a phosphate increase could still be allowed. Following the Dutch Nitrogen Judgment, a plan or project that resulted in additional discharge of phosphate to the River Lugg part of the River Wye SAC would have an adverse effect on integrity.

#### Para 5.29

Does this include both the River Wye SAC and River Lugg SAC?

#### Para 5.30

Allocations M05 and W45 are both located within the River Lugg catchment. Clarification is required on what mitigation has been proposed.

#### Para 5.33

In-combination - Multiple quarries and waste facility sites could be impacting on both the River Wye and River Lugg. Further explanation needed to explain how in-combination effects has been ruled out.

#### Para's 5.45 – 5.48

Noise and light disturbance have been mentioned as potential impacts. However, it is not clear whether any mitigation has been proposed. Further thought and explanation is required here, as other impacts from proposed works could impact on bats and therefore further mitigation may need to be considered.

#### Para 5.49

Change wording from likely significant effect to adverse effect on integrity.

Natural England would be happy to discuss the issues raised in this letter, should the Local Authority wish, to try and find a solution to the concerns that have been raised.

Yours sincerely

Rebecca Underdown  
Planning for a Better Environment Team