

Minerals and Waste Local Plan

Main Issues Statement

Main Matter 1 – Legal Compliance

Part B: Questions 10 to 22

Issue: Whether the Plan complies with all relevant legal requirements, including the Duty to Co-operate.

Planning and Compulsory Purchase Act 2004, Section 19 and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended)

Question 10: Has the Plan been prepared in accordance with the Local Development Scheme?

Response

10.1 The MWLP has been prepared in accordance with the Local Development Scheme; the latest iteration of which was produced in February 2022 (Examination Library ref. D2.15).

Question 11: Has the Plan been prepared in compliance with the adopted *Statement of Community Involvement*, allowing for effective engagement of all interested parties and meeting the minimum consultation requirements set out in the Regulations?

Response

11.1 The MWLP has been prepared in line with the *Statement of Community Involvement* (SCI) dated 2017 (Examination Library ref. D2.26) and in accordance with the relevant regulations. However, certain aspects of the regulation 19 consultation were different due to Government imposed restrictions due to Covid-19 – see paragraphs 12.2 and 12.3 below.

11.2 Prior to the submission of the Plan, a new SCI was produced in January 2022 (Examination Library ref. D2.31). Any future consultation arrangements, with regard to modifications for example, will be carried out in accordance with the latest version of the SCI.

Question 12: Does the Plan comply with the 2004 Act and the 2012 Regulations in terms of publishing and making available the prescribed documents?

Response

12.1 Yes, the Consultation Statements (Examination Library refs. D3.9 & D3.69) set out how the production of the Plan complied with the Planning & Compulsory Purchase Act 2004 and the Town & Country Planning (Local Planning) (England) Regulations 2012 during its consultation stages.

12.2 The production of the MWLP continued during the restrictions imposed during the Covid pandemic, in accordance with Government aspirations at that time – see the written ministerial statement of 19 Jan 2021. When the regulation 19 consultation of the MWLP took place in the Spring of 2021, the Council adhered to the requirements as set out in the Coronavirus (COVID-19): planning update, which made temporary changes to the Town and Country Planning (Local Planning) (England) Regulations 2012, under the Town and Country Planning (Local Planning) (England) (Coronavirus)(Amendment) Regulations 2020. This removed the need for local authorities to make hard copy documents available for public inspection for a temporary period from 16 July 2020 until 31 December 2021.

- 12.3 The usual public exhibitions, face to face consultation events could not be undertaken during the regulation 19 consultation. Instead consultation took place via a dedicated page on the Council's website. In order to help explain the MWLP's policies and proposals to as wide an audience as possible, a presentation with voiceover was recorded and made available on the consultation web page and phone numbers of officers were made available if anyone needed additional assistance in taking part in the consultation. In addition, all documents were made accessible to those using screen readers.

Question 13: Does the Sustainability Appraisal provide clear evidence to indicate why, having considered reasonable alternatives, the strategy in the Plan is an appropriate response? Does the methodology conform to that in the National Planning Policy Framework and Planning Practice Guidance?

Response

- 13.1 The Sustainability Appraisal (SA) has been carried out by independent consultants (LUC) on behalf of the Council from the outset. In addition to complying with legal requirements, the approach taken to the SA of the MWLP has been based on current best practice and the guidance on SA set out in the National Planning Practice Guidance. The methodology used for the SA is described in detail in Chapter 2 of the SA Report for the Publication Draft MWLP (Examination Library ref. [D3.60](#)).
- 13.2 Chapter 2 of the SA Report also describes the approach that has been taken to the consideration of reasonable alternative options for the MWLP throughout its preparation. Appendix D presents a detailed audit trail of the reasonable alternative site options that have been considered for allocation in the MWLP and for each site provides a clear reason for the Council's decision to select or reject it for inclusion in the Plan at each stage. Appendix E presents a similar audit trail setting out in detail how the policies in the MWLP have evolved from the Issues and Options stage in 2017 through to the Publication Draft version and providing the Council's reasons for the approaches taken forward, including for Policies M1: Minerals Strategy and W1: Waste Strategy.

Question 14: How does the Plan secure that the development and use of land contributes to the mitigation of, and adaptation to, climate change?

Response

- 14.1 The Plan has been prepared to provide a positive policy framework to bring forward sustainable development that will contribute to the mitigation of, and adaptation to, climate change.
- 14.2 This is achieved through specific strategic policies such as SP1, and the Resource Audit; SP3, promoting transport options that reduce greenhouse gas emissions; M1, promoting the use of alternatives to primary materials; and the waste policies seek to deliver the waste hierarchy and circular economy, including through the recovery of energy.
- 14.3 In addition, the supplementary text provides specific examples of how development proposals can make a specific contribution, for example through early delivery of restoration schemes that incorporate flood alleviation and through promoting best practice in handling soils.

- 14.4 The emerging MWLP has been subject to Sustainability Appraisal (SA) throughout its preparation, with options (including site options) and policies being appraised against a number of SA objectives including 'SA objective 10: Reduce Herefordshire's vulnerability to the impacts of climate change as well as its contribution to the problem'. The SA report has also considered the likely cumulative effects of the Plan on this SA objective (see Chapter 6 of the SA report).

Question 15: Describe how the Plan, and its preparation process meet the requirements of the public sector equality duty in section 149 of the Equality Act 2010.

Response

- 15.1 An Equality Impact Assessment (EIA) of the MWLP was produced in September 2021 (Examination Library ref. [D3.68](#)), which details how the Plan and its preparation process met the statutory requirements of the Equality Act 2010.

Question 16: Has Natural England (NE) responded to the Council's Note on Nutrient Neutrality in the Minerals and Waste Local Plan dated July 2021?

Response

- 16.1 Although NE did not respond to the Council's note prior to the submission of the MWLP, subsequent discussions on both this and on the suggested modifications to the Plan have resulted in NE submitting a position statement (Examination Library ref. [D3.86](#)) on issues relating to nutrient neutrality.

Question 17: Has NE responded to the Habitats Regulations Assessment (HRA) Addendum Report (June 2022)?

Response

- 17.1 NE sent a formal response to the updated *HRA Addendum Report* (June 2022) (Examination Library ref: [D3.90](#)), which raised three points of clarity:
- the conservation status of the River Clun SAC has not changed since 2021;
 - nutrient neutrality is not currently required across parts of the Wye SAC catchment that are not exceeding their nutrient limits; and
 - the HRA addendum report could show the updated baseline information on water quality targets in the Wye SAC in England.
- 17.2 These additional points do not relate to the points of concern outlined in NE's position statement and do not alter the conclusions of the AA. NE's advice will be taken into account in the next iteration of the HRA Report following the finalisation of the Main Modifications.

Question 18: Has NE's generic Nutrient Neutrality Methodology and updated catchment calculators been used?

Response

- 18.1 NE's generic Nutrient Neutrality Methodology and updated catchment calculators have not been used in preparing the Plan, not least because they were published after the Plan (February 2022), but also because they do not readily apply to minerals and waste development.
- 18.2 Instead, and as set out at section 3 of the *Preparing the Publication Draft Plan* (January 2021) (Examination Library ref: [D3.46](#)) the principles promoted by NE have been applied at a strategic level considered appropriate for the Plan. This has been undertaken separately across waste water management (section 3.3), mineral working and solid waste projects (section 3.4) and agricultural waste (section 3.5).

Question 19: What is the position with regard to the review of the Nutrient Management Plan and the Interim Phosphate Delivery Plan?

Response

- 19.1 The *Interim Phosphate Delivery Plan* (IDP) was produced by Ricardo for Herefordshire Council in 2021. *Stage 1* of the IDP (Examination Library ref. [D2.35](#)) provides a methodology for calculating phosphorous budgets for new development in Herefordshire. The *Stage 2* report (Examination Library ref. [D2.36](#)) provides a reference for determining suitable mitigation options that can be used to offset the additional phosphorous load from a new development, as well as a reference for assessing potential strategic options.
- 19.2 The *River Wye SAC Nutrient Management Plan* (NMP) is made up of three parts:
- Part 1: evidence and supporting information
 - Part 2: options appraisal
 - Part 3: the '*Action Plan*' (Examination Library ref. [D.2.37](#))
- It is a 'live' document, to be updated and reviewed as the evidence base improves, as measures are implemented, as new measures become available and as changes occur.
- 19.3 Parts one and two of the *NMP* were produced in 2014. The latest review of part 3, the *Phosphate Action Plan* (Examination Library ref. [D2.37](#)) was produced by the Natural Resources Wales, the Environment Agency and Natural England in November 2021. Its aim is to give certainty that river targets will be achieved. Plans and projects will then be able to rely on the *Action Plan* as strategic mitigation, passing through the Habitat Regulations Assessment with no adverse effects on integrity. It is intended that the *Action Plan* is reviewed on an annual basis by the Technical Advisory Group that sits under the Nutrient Management Board.
- 19.4 The Herefordshire Council website contains an up to date section on [nutrient management](#), which contains links to various reports and guidance documents. Included are Rivers Lugg and Clun Nutrient Budget Calculators, which have been produced by Natural England, as well as guidance on phosphate credits and further mitigation schemes, such as integrated wetlands, which will help to unlock development in the north of Herefordshire. The Council's guidance will continue to be updated in line with the *NMP* and further revisions, as appropriate.

Question 20: Paragraph 3.10 of the HRA of the proposed Main Modifications states that, through an absence of impact pathways, there will be no likely significant effect on the River Clun SAC. Please provide further explanation of this finding with reference to the Plan's policies, with

particular reference to those policies such as Policy W3 which would allow for development throughout the Plan area.

Response

- 20.1 The River Clun SAC flows into Herefordshire from the northwest, and less than 2.4km of the SAC occurs within the Herefordshire County boundary. Because the majority of Herefordshire is downstream of the SAC, there is an absence of pathways by which an impact source could affect the SAC. Any development proposals in proximity to the River Clun SAC would be required to be assessed under the Habitats Regulations and would only be permitted where it can be demonstrated that there would be no significant adverse effects, either alone or in-combination.
- 20.2 The nearest site allocations, M07a and M07b Leinthall Quarry, are located 6.1km downstream of the River Clun SAC. Chapter 4 of the HRA Report of the Publication Draft (Examination Library ref. [D3.34](#)) outlines the screening assessment of the River Clun SAC and identifies that there is potential for 'likely significant effects' in relation to air pollution and water quality and quantity. Other potential effects screened out for further assessment were physical damage / loss of habitat, non-physical disturbance, and non-toxic contamination.
- 20.3 Paragraphs 4.84 to 4.87 of the screening assessment presented in the *Habitats Regulations Assessment for the Herefordshire Minerals and Waste Local Plan Publication Draft Stage* (Examination Library ref. [D3.33](#)) state that the River Clun SAC is located 130m upstream (northwest) of the A4113 which is likely to provide the primary movement route for site allocations M07a and M07b. The River Clun SAC is designated for the presence of freshwater pearl mussel which is not considered particularly susceptible to the effects of air pollution. Furthermore, given the direction of flow any localised nutrient deposition would be likely to be carried away from the SAC. As a result, traffic emissions associated with the MWLP would not be expected to result in likely significant effects through air pollution.
- 20.4 The River Clun SAC is not hydrologically connected to the River Wye SAC, therefore, changes in the water quality or quantity of the River Wye SAC as detailed above, for example through nutrient enrichment or water abstraction, would not affect the distribution and abundance of salmonids populations, including salmon and brown trout, upon which the fresh water pearl mussel depends. In addition, as noted above, the only site allocations (M07a and M07b) which might result in movement of minerals along the A4113 (and potentially surface water run-off of pollutants from those HGVs) are an operational minerals site and proposed extension. There is potential for some overlap between these sites as the existing quarry ceases operation and the extension becomes operational, however, it is unlikely this would result in any significant increase in HGV movements along the A4113. As a result, the potential for the MWLP to result in likely significant effects on the River Clun SAC in relation to water quantity or quality was screened out.
- 20.5 The 2020 HRA Report and 2022 HRA Addendum therefore conclude that, through an absence of impact pathways together with low susceptibility, there will be no likely significant effects on the River Clun SAC from the MWLP.

Question 21: Please summarise the mitigation measures that could be taken to ensure nutrient neutrality.

Response

21.1 The Plan has been prepared to address the issue of nutrient neutrality, a key focus within Herefordshire. As a first step, it has been assessed through the Habitats Regulations Assessments to ensure that the Plan would not result in likely significant effects on any National Network Sites. Having established that principle, the Plan has incorporated a number of policy requirements to ensure that nutrient neutrality is appropriately addressed within development proposals to ensure adverse effects on integrity are avoided, either alone or in-combination. It will be for the applicant of each project to demonstrate how this will be achieved with examples given throughout the Plan, for example through best practice in soil handling.

Question 22: Should the Key Development Criteria refer to the need for Appropriate Assessment in relation to the Severn Estuary SAC, Special Protection Area (SPA) and Ramsar site as identified in Appendix B of the HRA (2020)?

Response

22.1 Appendix B of the *2020 HRA Report* (Examination Library ref. [D3.34](#)) outlines the Screening Assessment of European sites which identified likely significant effects on water quality and quantity in the River Wye SAC and downstream. Severn Estuary SAC, SPA and Ramsar sites are uncertain in relation to policies M3, M5, W3, W4, W5 and W6 and in particular for site allocations M05/W45 Wellington Quarry, M12 Callow Delve, M20 Westonhill Wood Delve, W05 Leominster HWRC, W63 Southern Avenue, Leominster, W66 Moreton Business Park, and W13 Former Lugg Bridge Quarry. Consequently, these elements were considered further in the HRA Report.

22.2 Chapter 5 of the HRA Report presented the Appropriate Assessment which concluded that, in terms of water quality and quantity, adverse effects on the integrity of the River Wye SAC and downstream Severn Estuary SAC, SPA and Ramsar, as a result of changes in water quality and quantity, will be avoided providing the avoidance and mitigation safeguards outlined in paragraphs 5.25 to 5.33 are implemented (as amended in the HRA Addendum to reflect the modifications to policies W3 and W4 which requires development proposals to demonstrate nutrient neutrality within the River Wye SAC). As the Severn Estuary SAC, SPA and Ramsar site is downstream of the River Wye SAC, the KDC which requires developments to achieve nutrient neutrality in relation to the River Wye SAC will be sufficient to ensure that there will be no likely significant adverse effects on water quality or quantity of the Severn Estuary SAC, SPA and Ramsar site.

[Note: for Matter 1 questions 1 to 9, see Part A]