

Meeting:	General scrutiny committee
Meeting date:	Monday 28 September 2020
Title of report:	Minerals and Waste Local Plan (MWLP)
Report by:	Senior Planning Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

Countywide, but individual aggregate minerals extraction sites are proposed in the parishes of:

- Aymestrey (Mortimer ward)
- Stoke Edith (Backbury ward)
- Wellington (Queenswood ward)
- Pipe and Lyde (Queenswood ward)
- Shobdon (Arrow ward)

Purpose

To present to the committee the publication draft Minerals and Waste Local Plan (MWLP) (Appendix A).

The Council is required to produce a MWLP (a development plan document ("DPD")) as part of the Herefordshire Local Plan, and this forms part of the Council's budget and policy framework.

The Budget and Policy Framework rules require that committee work programmes include any such plan, strategy or budget to enable Scrutiny members to inform and support the process for making Cabinet proposals to Council, in terms of the adoption of any item that forms part of the framework, including providing constructive challenge to the responsible cabinet member on policy proposals and exploring options for future policy development.

Recommendation(s)

That:

the committee determines whether it wishes to make any recommendations to the executive, which would strengthen the emerging policy approach.

Alternative options

1. There are no alternative options. Not to progress the MWLP would leave the Council in a position where the extant Unitary Development Plan policies are out of date. This would be contrary to the recommendation of the Core Strategy inspector, who stated that a separate MWLP should be prepared in accordance with the local development scheme. When adopted, this will form part of the Herefordshire Local Plan.

Key considerations

2. The MWLP is an element of the Herefordshire Local Plan. Initially the Core Strategy included minerals and waste policies, however, these were removed at examination and the inspector recommended they be set out in a separate minerals and waste local plan. The MWLP aligns with the principles and strategic direction established in the Core Strategy, but provides the policy framework relevant to minerals and waste development.
3. Minerals development includes activities such as mining and quarrying. Waste development includes activities such as waste recycling and the treatment and disposal of waste.
4. The MWLP will provide guidance to developers, local communities and other interested parties on where and when minerals and waste development may be expected over the plan period (up to 2041), as well as how it will be managed to both reduce adverse impacts and maximise benefits.
5. Once adopted, the MWLP will form part of the statutory development plan for the area and will be used as such for the purpose of determining planning applications for minerals and waste matters. Its preparation has involved ensuring compliance with statutory procedural requirements, including: Duty to Cooperate, Sustainability Appraisals and Habitats Regulations Assessments undertaken at key stages during the preparation of the Plan.
6. The MWLP and the majority of its evidence base is being produced for Herefordshire Council by the consultancy Hendeca, with the Sustainability Appraisals and Habitats Regulations Assessments undertaken by consultants Land Use Consultants (LUC). Other parts of the evidence base have been produced by British Geological Survey and the council's retained consultants BBLP/WSP.
7. The MWLP's preparation process is summarised below:
 - 2016 first call for sites
 - 2017 second call for sites
 - 2017 issues and options public consultation
 - 2019 draft plan public consultation
 - *2021 publication, submission and examination in public*
8. During the MWLP's key stages of production, members of Herefordshire Council were involved and their views sought, this included the establishment of a scrutiny panel. In

addition to the formal governance procedures which were adhered to, the following are of note:

- 2017 members' seminar and first minerals and waste panel meeting
 - 2018 two minerals and waste panel meetings
 - 2019 members' presentation and Q&A session
9. Following consultation on the draft MWLP in early 2019, the representations received from all parties (including; members of the public, local parishes, members of the council, statutory and other organisations) were reviewed and additional work was undertaken as required. Supplementary tasks included further analysis of those sites proposed to be allocated, assessment of a new site that was promoted through the representations, considering historic landfill sites within Herefordshire and updating the minerals and waste needs assessments.
 10. In addition, the publication draft MWLP has been prepared to: reflect changes in the National Planning Policy Framework and other relevant national policy documents, including the national waste strategy titled 'Our waste, our resources: a strategy for England' and will incorporate recommendations from the emerging documents: Strategic Flood Risk Assessment (level 2)¹, Sustainability Appraisal and Habitats Regulations Assessment.
 11. Those representations received to the draft MWLP that are considered to be key matters (those that would affect the policy approach or evidence base of the plan) are:
 12. **a) Review of the Core Strategy**
Some respondents said that reliance on the Core Strategy was not appropriate, either because they felt that the evidence to that development plan document, or the consequent policy, was out of date.
 13. Evidence for the MWLP has been either undertaken specifically in the preparation of the document (e.g. minerals and waste needs assessments), or has been reviewed as appropriate to it (e.g. considering potential environmental effects from the proposed sites to be allocated). Consequently the evidence base is considered to be appropriate and robust.
 14. An update of the Core Strategy has commenced. However, the recent consultation white paper on Planning for the Future, and any subsequent new approach to the plan making system, will need to be considered, along with how such changes may need to be reflected in the MWLP. The plan making teams responsible for both the Core Strategy and the preparation of the MWLP are in regular dialogue to ensure that, together, these documents will continue to provide a comprehensive policy framework.
 15. **b) Policy M7: Unconventional hydrocarbons**
Opposition to fracking was raised in representations to the draft MWLP and through the Full Council resolution on 16 Dec 2016 to seek to block any hydrocarbon extraction processes in or under the Areas of Outstanding Natural Beauty in Herefordshire.
 16. There is just one area of coalbed methane in Herefordshire. At the time of preparing the MWLP, the relevant license for its exploration had not been taken up, although an opportunity for this to be reconsidered may arise in the future.

¹ Strategic Flood Risk Assessment Level 2 was received on 20.08.20

17. At the time of preparing the draft MWLP in 2018, the National Planning Policy Framework advised that mineral planning authorities should; “recognise the benefits of on-shore oil and gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting the transition to a low-carbon economy; and put in place policies to facilitate their exploration and extraction.” Consequently, even whilst recognising the opposition to fracking, it was concluded that the draft MWLP 2018 should include a policy regarding this type of mineral development.
18. In 2018 a range of representations were made to the unconventional hydrocarbon policy M7 in the draft MWLP, including: some remaining objection to the principle of having the policy; the CPRE recognising the inevitability of having the policy and referring to its own guidance; the Environment Agency referring to its own guidance and regulatory role; the Coal Authority welcoming the policy and industry representatives considering the policy to be inappropriate, poorly worded and too restrictive.
19. The exploration and extraction of unconventional hydrocarbons remains a topic subject to legal challenge and change. From July to October 2018, the Government undertook early stage consultation on the inclusion of shale gas production projects to be included in the Nationally Significant Infrastructure Projects (NSIP) regime. Although at the time of preparing the publication draft MWLP, no decision had been reported. Just prior to the start of that consultation, a government report titled ‘Planning guidance on fracking’ was published, paragraph 59 of which states:
“There is a contradiction between the spirit of the Localism Act 2011 and the 2018 Written Ministerial Statement on fracking planning policy which could unreasonably restrict Local Plans. Mineral Planning Authorities are best placed to understand their local area and weigh up what requirements should be in place for fracking developments. We note that Local Plans are already subject to scrutiny at national level from the Planning Inspectorate. Given that the English planning system is plan led, Mineral Planning Authorities should be free to adapt their Local Plans as they see fit as long as they do not arbitrarily restrict fracking developments. It is essential that Mineral Planning Authorities have the right to put conditions in the Local Plans which can be justified having proposer regard to local circumstances.”
20. The Oil and Gas Authority was consulted in September 2019 but no response was received.
21. In November 2019, the Government issued a moratorium on fracking, with immediate effect. At the time of preparing the publication draft MWLP, the ban had not been made permanent. The oil and gas industry has committed to providing the scientific evidence required to have the moratorium lifted.
22. It is concluded that policy M7 should be removed from the MWLP. However, as explained within the supporting text to the policy, both conventional and unconventional hydrocarbons are covered in policy M1, to retain flexibility should either resource become workable and of interest in the future. As mineral resources, they would also be protected by policy M2.
23. Further, whilst policy M7 has been deleted, the supplementary text that preceded it has been retained, but reviewed and updated, incorporating reference to the guidance provided on the department for Business, Energy and Industrial Strategy website, ‘Guidance on fracking: developing shale gas in the UK’ last updated in March 2019.
24. **c) Policy W3: Agricultural waste**

It is unusual to include a policy relevant to agricultural waste within a development plan document; however, it is relevant here as Herefordshire is a unitary authority that has a strong agricultural sector.

25. In addition, it is recognised that the draft MWLP 2018 incorrectly identified a '*relatively small role*' played by agriculture in terms of impacts on the River Wye SAC. In fact, the River Wye SAC Nutrient Management Plan evidence base identified diffuse phosphate pollution from agriculture to be one of the main pressures (alongside sewage treatment works discharges), particularly in the River Lugg catchment.
26. The judgment made in 'the Dutch Case' [*Coöperatie Mobilisatie* (joined cases C-293/17 and C294/17)] strengthens the need for all available tools to be used to reduce phosphate levels in the River Wye SAC.
27. Consequently, whilst there was some objection to policy W3 made in the representations to the draft MWLP 2018, it is retained within the publication draft MWLP, albeit with some amendments to both the supporting text and the policy itself, primarily to clarify the policy purpose.
28. **(d) Policy W6: Preferred locations for construction, demolition and excavation waste management facilities**
There was limited comment made to policy W6, however, the representation submitted on behalf of Ataghan Limited Stoke Edith Estate merited further consideration. The representation considers that Perton Quarry could be suitable for waste recycling or deposit and should not be discounted on account of the existing permission.
29. Perton Quarry is not considered suitable to be promoted within the MWLP as a waste treatment or disposal location, not least on account of the local highway network. However, as recognised in the representation, the site could be proposed for inert waste treatment under policy W6, as an active mineral working.
30. It is the intention of policy W6 that active mineral sites may be used for inert waste recycling. However, it will be for the submitted application to demonstrate that such a proposal would be acceptable development, this is different to the site specifically being promoted within the MWLP.
31. Further, this representation indicated that policy W6 should be amended, in order to clarify the order of preference in terms of locations for inert waste recycling. The preferred location is at Former Lugg Bridge Quarry, with active mineral workings providing a fall-back position if appropriate.
32. **(e) Agent of Change, safeguarding and the use of buffer zones**
The National Planning Policy Framework, paragraph 182, states:
Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facilities could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change' should be required to provide suitable mitigation before the development has been completed."
33. Representations from, *inter alia*, the Minerals Products Association, request that the agent of change principle is written into policies of the MWLP, in conjunction with stated buffer

zones. Representations also consider that reference to buffer zones within policy represent best practice, with the Mineral Products Association suggesting that buffer zones should be applied both around the safeguarded area, and then again to indicate a further zone within which the agent of change principle would continue to apply.

34. The concept of protecting the existing development has been present in minerals (as safeguarding) and waste for some time. However, the July 2018 published version of the National Planning Policy Framework was the first time the concept was applied to all other developments.
35. The approach developed for safeguarding, and the decision not to pursue buffer zones, is set out from paragraph 2.2.30 of the Spatial Context and Sites Report. There has been no new evidence suggested in response to the draft MWLP 2018 to demonstrate that this should change. The MPA refers to guidance produced by the British Geological Survey 'Mineral safeguarding in England: good practice advice'. This has been reviewed during the preparation of the draft and publication draft MWLP stages.
36. The concepts of safeguarding (both minerals and waste assets) is well established and the 'agent of change' principle is clearly set out in the National Planning Policy Framework. In simple terms, it should not be necessary to repeat these within the MWLP. Further, the decision not to include buffer zones within the MWLP is considered to be sound.
37. However, it is clear that these are issues that do concern the minerals industry and so policy M2 has been amended to incorporate the agent of change text presented in the National Planning Policy Framework. This is considered appropriate text to address the potential for non-minerals development to adversely affect minerals resource, infrastructure and workings without relying on a fixed distance buffer zone.
38. It has also been incorporated into policy W1, to ensure adequate protection for existing waste infrastructure.
39. In addition, policy M2 has been amended to include explicit reference to associated infrastructure
40. **(f) Presentation and use of data in the site assessment**
The Spatial Context and Sites Report was one of the documents accompanying the draft MWLP through consultation. Representations were received in response to the sites proposed to be allocated (as set out in Annex A to the draft MWLP 2018).
41. Whilst limited objection was made in relation to the sites proposed to be allocated, and none was received in relation to those that were discounted through the sites assessment, substantial comment was received in relation to the site assessment work that had been undertaken, including: detailed comment on specific sites, e.g. to identify that a feature had not been considered in enough detail; and overarching comment in relation to the level of detail and analysis provided within the site assessment. Historic England sought detail on nearby heritage assets and how impacts from development at each of the proposed sites could be mitigated effectively. A meeting was subsequently held with Historic England to discuss each of their points raised.
42. A new site was proposed for mineral extraction at Arrow Green. The site was then subjected to the same analysis as other sites previously considered in the Spatial Context and Sites Report. It was concluded that it was not appropriate to allocate.
43. As a result of the representations received and the meeting with Historic England, it was decided that additional work should be undertaken to supplement the site assessment

work. This focussed on the sites proposed to be allocated and the additional informed was used to evidence their suitability and to demonstrate that their constraints could be overcome. This included a review of the potential impact of the sites on the night sky.

44. As a result of the additional work, three main changes were made to the MWLP:

- Site M05g, a new area of working located to the east of Wellington Quarry, has been reduced in size to protect the setting of the Church of St. Mary, in Marden.
- All of the key development criteria have been reviewed and updated, to incorporate both detail from the supplementary sites report (appendix B), but also consultation representations where appropriate; and
- Policy/supporting text has been reviewed and updated, e.g. clarifying the expectations in regard to phased working and maximising geological assets.

45. **(g) Environment Agency**

In addition to comments on the sites analysis, the Environment Agency also commented on:

- restoration plans;
- infrastructure resilience;
- terminology;
- landfill mining;
- agents of change;
- presumption against stockpiling; and
- other – increased reference to Environment Agency resources, including the Catchment Data Explorer, conventional and unconventional hydrocarbons; and resource audit, waste to Doncaster.

46. Restoration achieved through backfilling with waste has the potential to have a detrimental effect. Such deposits are subject to planning and any proposal will be considered in detail on submission of an application and include consultation with the Environment Agency. The MWLP only promotes the use of inert wastes for site reclamation, this is primarily as use of this waste stream will reduce the likelihood of detrimental effects occurring. The MWLP also recognises the regulatory regime delivered through environmental permits and encourages developers to follow a twin-track approach.

47. The Environment Agency requests that consideration is given to contingency planning for the most at risk waste streams, to ensure operations are not significantly disrupted and business continuity is maintained. Contingency planning, *per se*, is not within the remit of the MWLP. However, the plan seeks to improved resilience through promoting development and encouraging more facilities to be built at appropriate locations across the waste hierarchy. Waste needs assessment have been carried out to identify the range of facilities required, taking account of local circumstances. The MWLP provides multiple location options for facility types higher up the waste hierarchy, with decreasing options available for facility types lower down, and none available for non-inert waste disposal.

48. The MWLP is primarily a land use document directing new development, rather than attempting to bring about cultural (personal) change. Through policy such as SS8, it places greater responsibility on all to engage in more sustainable waste/resource management.

49. In preparing the MWLP, the government's 25 Year Environment Plan and Resources and Waste Strategy have been reviewed. The language of the MWLP has been checked to ensure it is clear, but there remains reference to all of the terms of: waste management, waste hierarchy; and circular economy. Such terminology is considered to be acceptable and necessary and is defined in the glossary to the plan.

50. The Environment Agency's suggestion of a policy on landfill mining has been considered in some detail through a European and national literature review and a local landfill legacy review. These demonstrate that there is potential for some important resources to reside in old landfill sites, and that technical capability to extract these resources, safely, is developing. However, it is also clear that there remains substantial barriers to landfill mining, and there is little evidence to suggest that this will become a substantial market in the foreseeable future, or at least within the MWLP period.
51. Research of historic landfill sites within Herefordshire indicates only one location at which further research would be appropriate; and this concluded that the site was not appropriate and that there was no interest in it for mining. There is little evidence that there is any interest for landfill mining to occur in Herefordshire.
52. The research undertaken has been at high level, however, it is considered to be both proportionate and credible. On the basis of this research, there is little evidence that such development would be appropriate to promote or even that it would be deliverable. It is therefore not considered to be necessary or appropriate to have a policy for landfill mining in the MWLP.
53. The Environment Agency identified incidents of large scale waste stockpiling, "*mainly of baled wastes in Staffordshire and at other locations around the country.*" Further, that "*Herefordshire benefits from extensive areas of open land that could be used for storage.*" Hendeca's research found reported incidents of unauthorised storage of wastes in the West Midlands, with the closest being in Kidderminster, in Worcestershire.
54. Within Herefordshire, neither fly-tipping nor unauthorised storage of waste are considered to be a material problem. The number of fly-tipping incidents is considered to be low when compared to larger cities. There is no knowledge of any large scale waste storage within the county that is not otherwise associated with some other permitted activity, or at a site with the appropriate environmental permit.
55. The MWLP should be a positive, actively promoting the delivery of desired development at preferred locations. It cannot cater for all eventualities and should not have a policy that is written in the negative. Further, fly-tipping and the storage of waste without permission are not lawful in planning terms and are otherwise illegal activities. There is a robust regulatory framework already in place that would be appropriately supported by policy of both the core strategy and the MWLP, should enforcement be expedient. A presumption against stockpiling as suggested by the Environment Agency is not considered to be necessary or appropriate.
56. The publication draft MWLP has been amended to supplement reference to the Environment Agency's on-line resources.
57. The publication draft MWLP does not promote the extraction of either conventional or unconventional hydrocarbons. The National Planning Policy Framework does not promote the extraction of coal and the PEDL Block SO51a is not active and a licence has not been granted for hydrocarbon extraction.
58. The publication draft MWLP supplementary text has been amended to include reference to major developments that are not new build, such as substantial refurbishment.
59. Waste transported to Doncaster for incineration. The evidence base for the MWLP considers waste arisings, movement and implications for policy development. The MWLP

sets out a range of new opportunities for waste management facility development to provide greater opportunities in the country. A new waste needs assessment has been completed, incorporating the latest data from 2018.

60. **(h) Historic England**

In addition to comments on the site assessment evidence base, other comments were made:

- the MWLP does not demonstrate a positive approach to the historic environment as required by the National Planning Policy Framework, paragraph 185;
- reliance on the Core Strategy was not sufficient to ensure the historic environment can be sustained in line with National Planning Policy Framework requirements; and
- additional guidance documents prepared by Historic England should be referenced within the MWLP

61. The requirements of the National Planning Policy Framework were addressed in the draft MWLP and are continued and reinforced in the publication draft MWLP.

62. The overarching strategy in the Core Strategy is the starting point for the MWLP. Being supplemented by the MWLP for mineral and waste development, there is, inherently, a positive strategy presented for the conservation and enjoyment of the historic environment. Not least, a MWLP has been prepared to enable the provision of sandstone and other minerals that are required to maintain built heritage assets within Herefordshire and beyond.

63. The desire of the Core Strategy to sustain and enhance the significance of heritage assets is repeated in the vision and objectives of the publication draft MWLP and delivered through the identified policies, including the early restoration of sites. The MWLP also considers movement and transportation requirements associated with minerals and waste sites, including that access arrangements and pipe/conveyor routes should avoid damage to heritage assets.

64. The Core Strategy makes clear the desirability of new development in making a positive contribution to local character and distinctiveness and addresses the contribution made by the historic environment to the character of a place. These priorities are continued through the MWLP, principally through the potential for restoration schemes to be delivered at the landscape scale and incorporating priorities for heritage assets. In addition, the key development criteria require proportionate assessment of impacts on heritage assets from proposed development. This assessment should also include identifying opportunities to enhance significance and make a positive contribution to local character and distinctiveness.

65. It is considered that the MWLP, read alongside the Core Strategy, provides a positive strategy for the historic environment and that this approach, is sufficient to ensure that the historic environment can be sustained in line with the National Planning Policy Framework requirements. Further, it is considered that this approach will enable both the historic environment and heritage assets within Herefordshire to be improved.

66. The publication draft MWLP has been amended to supplement reference to Historic England's guidance.

67. **(i) Phosphates in the River Wye SAC**

The preparation of any local plan is undertaken with an objective of having no likely significant effect on a designated site. In addition, local concern regarding phosphate

levels in the River Lugg has been understood since the start of preparing the MWLP. The starting point for preparation of the MWLP has been to seek to avoid the likelihood of having any adverse effect, but also seek to deliver policy that would help to improve the condition of the designated site. This outcome has been sought through a number of different routes including:

- the site analysis has recognised and considered the potential for impact on designated sites;
- the key development criteria have been developed as relevant;
- policy has been drafted seeking to achieve improved reclamation of sites, incorporating green infrastructure priorities that reflect local conditions;
- policy has been drafted to address the management of agricultural wastes; and
- incorporating recommendations from the HRA Screening Report.

68. The preparation of the publication draft MWLP has focussed on how it, as a land use policy document, can contribute to achieving betterment and/or neutrality on terms of phosphates in the River Wye SAC.

69. Since it is not a land use policy document promoting either housing or tourism, these sectors are not necessary to consider further. Minerals and waste projects, including waste infrastructure, can reasonably be described as commercial developments. Such developments experience change over time and can also involve a change in agricultural practices, for example, where a former agricultural field is developed for mineral extraction or waste infrastructure. So, whilst the MWLP is not a land use policy document to promote agricultural development, it is intended to have a role in influencing the management of wastes from agricultural units within the county.

70. The policies of the MWLP have been drawn up to cover the following matters:

- *Waste water management*

Information from Dwr Cymru/Welsh Water identifies specific locations in the River Wye SAC at which phosphate removal will be undertaken. If this requires development above ground, planning permission is likely to be required. Consequently, it is considered appropriate that these waste water treatment works are identified in the publication draft MWLP.

Severn Trent Water infrastructure does not release water into the River Wye SAC and therefore no further policy framework is considered necessary.

Dwr Cymru/Welsh Water requested that further advice be included in the MWLP to address protection for its assets, which has been incorporated into the publication draft MWLP.

Consequently policy W4 has been updated to include an expectation that waste water treatment will achieve reductions in phosphate releases and to encourage phosphate recovery for beneficial uses. The supporting text has been updated to reflect the location specific intention for waste water infrastructure operated by Dwr Cymru/Welsh Water.

- *Minerals and waste projects and agricultural waste*

As a commercial activity that does not incorporate overnight accommodation, minerals working projects would not normally be considered as a source of phosphate. However, it is recognised that they could result in a change in agricultural land throughout the extraction process; stripping away topsoil and subsoil; extracting the mineral and restoration. These risks can be avoided by the

use of conditions requiring proposals to demonstrate how nutrient neutrality, or betterment, would be achieved. For example, testing soils prior to their stripping and setting out a plan to manage phosphate releases; restricting development proposals within any one area; and restricting restoration proposals that would become tourist attractions.

The key development criteria attached the sand and gravel development areas at Upper Lyde, Shobdon and Wellington already seek to avoid a proliferation of operational sites; only one area should we worked at any one time, limiting the amount of associated infrastructure.

The publication draft MWLP has been updated to incorporate these requirements.

- *Waste development (excluding waste water facilities)*
As a commercial activity that does not incorporate overnight accommodation, solid waste projects would not normally be considered as a source of phosphate. Further, no new sites are proposed that would result in a change to agricultural land or practices.

Some research indicates that some waste management processes may result in the emission of phosphates. These include municipal solid wastes and clinical and hazardous wastes going through thermal processes and disposal to landfill. The MWLP does not promote such management of these wastes within the county and no suitable locations have been identified.

The MWLP does not promote the use of thermal processes to recover energy from residual wastes. However, there is a recognised benefit in recovering the phosphates from energy recovery facilities for beneficial purposes. Evidence points to a potential 70% phosphorous recovery rate from municipal solid waste incineration fly ash.

Although the thermal treatment of waste is not itself a likely phosphate source, recognising the importance of this issue within Herefordshire, the publication draft MWLP has been updated to include encouragement for the recovery of phosphorous from the resultant fly ash, to be put to beneficial purposes.

71. (j) Agricultural waste

Such waste is widely recognised as a key diffuse source of phosphates and is a primary contributor to phosphates in the River Wye SAC. For this reason, the MWLP includes a policy to address agricultural wastes. This should give Herefordshire Council (as the local planning authority) more control over the land use aspects of the sector, which include waste disposal, leading to an improved environmental outcome.

72. Within the publication draft MWLP, the supporting text which accompanies policy W3 has been supplemented with references to relevant case law and to the council's position statement on phosphates in the River Wye SAC and new development.

73. Policy W3 is considered to be an innovative and effective measure, adding to the range of tools available to regulatory bodies to reduce phosphate releases from agriculture, a significant sector within Herefordshire. This will add to and support the raft of other legislation which already regulates the agricultural sector.

74. (k) Incorporating the recovery of phosphorous in policy

Phosphorous is an essential, but non-renewable mineral, the raw resources of which are likely to become unavailable within the foreseeable future. The recovery of phosphorous is therefore an important activity that should be encouraged.

75. Waste water treatment companies operating within Herefordshire are already testing appropriate methods of recovering phosphates.
76. An objective of the MWLP is to deliver a circular economy. There is a need to reduce phosphate emissions into the River Wye SAC, which means they will need to be captured prior to their release. The MWLP promotes the use of energy recovery for residual wastes, which has the potential to recover phosphate from the fly ash. Anaerobic digestion processes, that can be used at waste water treatment facilities and promoted on farm and are promoted in the MWLP, can also provide a source for phosphate recovery. However, it is noted that anaerobic digestion plants may also be a pollution risk and this will be considered in the determination of proposals for such development.
77. Drawing all of this together, leads to the inclusion of a policy intention to encourage the development of infrastructure to enable the recovery of phosphorous.
78. **(I) Minerals Forecasting**
Representations to the minerals evidence base included some level of concern in regard to mineral forecasting, principally from CPRE, Here for Hereford and Wye Ruin It. They considered that the demand forecasts were too high and that consequent levels of extraction were too high and failed to ensure the long-term conservation of minerals resource. Also, the approach of comparing the infrastructure set out in the Core Strategy with that in the Unitary Development Plan was considered to be '*spurious*'. The Core Strategy was considered to be out of date and the housing trajectory forecasts were considered unlikely to represent the central element of the Core Strategy to grow the County's economy at a faster rate than elsewhere.
79. The Core Strategy is an adopted development plan and is therefore considered to be an appropriate resource to consider within the range of forecast indicators that are used. The minerals need assessment has been updated with the most recent information available.
80. The Experian forecast is also considered to be an appropriate reference. It was developed on Herefordshire specific data and, whilst it is a couple of years old, recognising the uncertainties that lie ahead as Brexit is implemented, it is considered to remain relevant.
81. Forecasting is not an exact science, and minerals data is not comprehensive. A range of forecasts have been considered.
82. Staffordshire County Council sought more detail on the assessment of sand and gravel provision and also considered that a 10-year sales average should provide the basis for provision, identifying that, as Herefordshire currently relies on a level of imports, a level of provision greater than the current 10-year sales average could be justified.
83. An annual rate of working is not forecast, as this is considered to be too precise a level of detail that can reasonably be calculated on the basis of the available data. In any event, the rate of extraction will primarily be driven by market demand, which is beyond the remit of the MWLP.
84. The minerals industry felt that policies M3 and M4 should be altered to permit greater mineral extraction within Herefordshire over the plan period. The Minerals Products

Association also considered that the winning and working of sandstone should be less restrictive, and not focussed on addressed local demand.

85. The policy wording has not been amended as suggested as the proposed text is considered to provide too much encouragement for minerals working. Instead the policies have been proposed to provide a balance between providing for the County's forecast levels of demand and an ability to contribute to the Managed Aggregates Supply System (MASS), and not promoting excessive mineral working, such that reserves are not worked efficiently. The policy has been amended to make clear the ability to review the demand forecast through the annual and five-year reviews of the plan.
86. The assessment in the mineral needs assessment 2019 has been extended to 2041, to reflect the intended end date of the MWLP. This provides a plan period of more than 15 years and should enable appropriate levels of landbank to still be available at the end of the plan period, and leading into the preparation of any revised minerals local plan.
87. *Sand and Gravel*
In order to deliver the positive approach sought in the vision and objectives of the MWLP, to be self-sufficient and to make a reasonable contribution to MASS, it is appropriate to consider planning for the greatest forecast demand, recognising that this may be an overestimate. The approach to site allocation and preferred areas of search are demonstrated to be sufficient to meet the wide range of demand forecast for sand and gravel through the plan period to 2041. However, it would not be a preferred strategy for many quarries to be opened to meet the highest forecast demand, without there being a robust market for it. Policy of the MWLP seeks to phase development such that sand and gravel reserves and sales can be monitored throughout the lifetime of the MWLP, allowing new operation only as required. This will avoid a proliferation of working and should encourage optimal working at each operational quarry.
88. *Crushed rock*
Two methods of forecasting crushed rock demand have been considered and the varying results reflect the uncertainties in mineral data. It is not possible to be definitive about whether the two proposed allocations for extensions at Leinthall and Perton quarries will be sufficient throughout the Plan period. If demand for crushed rock in Herefordshire is at the lower end of the forecasts, then it would appear to be so. There is potential that a forecast demand of nearly 21 million tonnes is excessive. Discussions with the operators during sites visits indicated that the crushed rock in the County is not of a particularly high quality. For example, it cannot be used for road surfacing, although it is use in a range of other construction projects.
89. The approach to site allocation and areas of search are demonstrated to be generally sufficient to meet the wide range of demand forecast for crushed rock through the Plan period to 2041. However, if the higher demand does arise over the plan period, there is potential that Herefordshire would not be able to make a material contribution to MASS for crushed rock.
90. As with sand and gravel, it would not be a preferred strategy for many quarries to be opened to meet the highest forecast demand, without there being a robust market for it. Policy seeks to phase development such that crushed rock reserves and sales can be monitored throughout the lifetime of the MWLP, allowing new operations only as required. This approach will avoid a proliferation of workings and should encourage optimal working at each operational quarry.
91. *Building stone*

All active sandstone delves appeared to be suitable in principle to be able to gain extensions of time for minerals working and three appeared to be appropriate for future extensions in size of the working area.

92. Forecasts show limited demand, which is similar to past levels. The proposed sites are considered appropriate to satisfy this. In addition, the policy allows other workings where relevant criteria are met.
93. *Clay, coal and unconventional hydrocarbons*
It is reasonably assumed that there will be no demand for these minerals and consequently no site is proposed to be allocated in the MWLP.
94. **(m) Waste**
There were no representations made in direct response to the Waste Needs Assessment or to the level of need stated in the draft MWLP policy.
95. Representations were received seeking to:
 - extend the principles of the resource audit to refurbishment schemes and not just to new build development;
 - include composting schemes; and
 - more fully integrate the circular economy.
96. All of the above points have been accepted and the relevant text has been amended within the publication draft MWLP.
97. The Strategic Flood Risk Assessment Level 2 report was received on 20.08.20 and has been sent to consultants Hendeca. It is not anticipated that this last piece of evidence for the Plan will alter, to any significant extent, the policies and proposals of the publication draft MWLP. Once any necessary amendments to the Plan have been made a Habitats Regulations Assessment and Sustainability Appraisal will be undertaken (by consultants LUC) and subsequently their recommendations will be incorporated into the publication draft MWLP prior to it being presented to Full Council and, subsequently, undergoing its last round of public consultation before examination.

Community impact

98. The MWLP seeks to ensure that sites and locations are identified for mineral and waste development according to the forecasted demand until 2041. This is as relevant to the whole population of Herefordshire and is as pertinent to those residing in the rural parishes as it is to those in Hereford and the market towns.
99. This report provides the General Scrutiny Committee with the opportunity to respond to the content of publication draft MWLP. Comments will be reported to cabinet before the plan progresses to Full Council. Any outstanding comments which are not incorporated into the MWLP can be addressed at the subsequent examination in public.
100. The General Scrutiny Committee can help to ensure that the protection of the environment and climate change are sufficiently addressed in the sustainable development policies and proposals of the publication draft MWLP.

Environmental Impact

101. The MWLP has had due regard to the Council's environmental policy commitments. Many of them underpin its policies and proposals:

- *Natural resources are used efficiently.* The National Planning Policy Framework also identifies the need to ensure that mineral resources should be used sustainably. The MWLP, in assessing future need, only identifies sites for future minerals extraction which are necessary over the plan period and encourages the use of secondary and recycled materials in preference to the extraction of primary materials. It also safeguard mineral resources and infrastructure for future uses.
- *Minimise waste.* The MWLP seeks to deliver the circular economy and promotes the concepts of waste hierarchy. The MWLP's sustainable waste strategy will deliver a reduction in the amount of waste re-used, recycled or used to recover energy and a decrease in the amount of waste disposed to landfill. Waste management facilities are also an element of the circular economy, so long as the materials and/or energy recovered are put to beneficial uses.
- *Reduce greenhouse gas emissions.* The built form of waste management facilities may more obviously align with the expectations of this policy commitment, but minerals working can also make a significant impact. Minerals are to be extracted efficiently and ensure that a high quality of reclamation and after use can be achieved.

The winning and working of minerals, and some waste processing operations, is resource intensive. Reduced energy usage can be achieved through good site design to reduce transport movements, for example. Buildings and plant can be designed to reduce resource requirements and consequent carbon emissions, for example, through the use of ultra-low emission vehicles and renewable energy supply (including solar panels, open-loop ground source or surface waste source heating and cooling systems).

The MWLP will expect increased resource efficiency measures in plant, buildings and operation in order to achieve climate change priorities.

- *Raise awareness of and mitigate against and adapt to climate change impacts.* The strategy of the MWLP is centred on sustainability, from its vision and objectives through to its specific policies and proposals. In addition to the text of the bullet point above, an example of how it addresses climate change is; the reclamation of sites, which provides opportunities, in assisting ecological networks to be more resilient, enabling the movement of wildlife as it adapts to a changing climate. The after-use of a site can also deliver objectives to address climate change, for example, creating new habitat that also provides flood storage to alleviate risks elsewhere.
- *Prevent and reduce pollution.* The waste strategy set out in the MWLP seeks to deliver sustainable management of waste in the County. Its waste policies will prevent and reduce pollution from a variety of waste streams and a specific wastewater management is also included, in order to assist in the minimisation of phosphate levels in the River Wye SAC.
- *Conserve the natural and historic environment of Herefordshire.* Good design requires full consideration of the surrounding environment, its constraints and the opportunities for enhancement, including change for the better. The MWLP sets out a comprehensive approach, addressing exploration, construction, operation, buildings and machinery and people and place across the lifetime of the site and through its aftercare. This will enable sustainable development to be realised.

All minerals and waste development will be expected to incorporate robust measures to ensure that the proposed development does not cause unacceptable adverse impacts on either the environment or local communities, many of which can be overcome by implementing standard measures, which are set out in the plan. Protection of the landscape, townscape, biodiversity, geodiversity, historic environment and heritage assets (whether above or below ground) are all addressed through the MWLP's policies.

- *Promote links between environmental sustainability and economic growth and well-being.* Minerals and waste management infrastructure is essential to support a modern economy. Minerals provide many of the raw materials necessary for construction, energy and industry and they are therefore essential in helping to sustain economic growth. Therefore the MWLP plans for their supply, whilst at the same time requiring that the impacts of extracting them are kept within acceptable limits. Dealing with waste is a major challenge for society and needs to be addressed alongside other initiatives to improve the sustainability of our environment and economy.

The MWLP provides for a network of waste management facilities and appropriate infrastructure to maximise waste as a resource and to avoid significant adverse impacts on the environment and communities.

102. The MWLP is subject to Sustainability Appraisals and Habitats Regulations Assessments at draft and publication stages and these reports influence the Plan's content. In addition, statutory undertakers, such as the Environment Agency and Historic England, have been consultees during the Plan's development, and their representations fully addressed.
103. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors, we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.

Equality duty

104. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
105. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes.

106. Where a decision is likely to result in detrimental impact on any group with a protected characteristic it must be justified objectively. This means that attempts to mitigate the harm need to be explored. If the harm cannot be avoided, the decision maker must balance this detrimental impact against the strength of legitimate public need to pursue the service change.
107. It is not considered that the MWLP, or its content, has in impact on the Council's Equality Duty. All stages of public consultation on the plan have been made accessible to all and were made in accordance with the regulatory requirements of the Town and Country Planning (Local Development) (England) Regulations 2012 and a Consultation Statement will be produced to assist the inspector at the forthcoming examination in public as to whether the MWLP complies with the requirements for public participation and Government guidance.
108. Public involvement was carried out following the approach set out in Herefordshire's Statement of Community Involvement, adopted in 2017. Methods included: emails, letters, Facebook, Twitter, council website, cabinet members' newsletter, hard copies of MWLP made available at info points and/or libraries across the county, a presentation to stakeholders and exhibitions open to the public. Responses could be made via online surveys, via email or letter.
109. It is considered that the approach to public engagement was appropriate and that those with protected characteristics were able to fully engage with the process.

Resource implications

110. The production of the MWLP has been funded through the local plan budget and reserves.
111. There will be a continuing need to fund the production of the Sustainability Appraisal (SA), the Habitats Regulation Assessment work, the continued work on the Plan's development by Hendeca (specialist minerals and waste planning consultants) and the examination in public (expected in 2021). This additional funding will also be sourced from the local plan reserves.
112. Costs are estimated to be:
- SA/HRA £30,000
 - Hendeca £40,000
 - Examination £30,000

Legal implications

113. The Council is required to produce a MWLP (a DPD) as part of the Herefordshire Local Plan. This forms part of the council's policy framework. As explained in the Purpose of this report, the budget and policy framework rules require that Scrutiny committees consider in their work programmes including any such plan, strategy or budget to enable them to inform and support the process for making Cabinet proposals to Council.
114. Under Part 3 Section 3 of the constitution, Cabinet are required to formulate or prepare the documents consisting of the budget and policy framework and shall make recommendations to Council on their implementation. The MWLP as a DPD pursuant to Section 15 of the Planning and Compulsory Purchase Act 2004 (as amended) is one of the documents within the budget and policy framework which Cabinet are required to make

recommendations to Council on, the adoption thereof being a Council function under Part 3 Section 1 of the constitution.

115. Sections 15 and 16 of the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011) places a duty on local planning authorities to prepare a Minerals and Waste Development Scheme which will specify documents such as proposals and policies to guide minerals and waste related planning decisions to be produced for the area, including the MWLP. The MWLP is required to take account of national government policy and planning practice guidance when being formulated, including the NPPF and Guidance Local Plans.
116. Section 20 of the Planning and Compulsory Purchase Act 2004 (as amended) requires the MWLP to be submitted to the Secretary of State for independent examination, once the council is satisfied it has complied with procedural requirements on preparation, publication and consultation (section 19 of the Planning and Compulsory Purchase Act 2004 and regulations 18-20) as laid out in the Town and Country Planning (Local Development) (England) Regulations 2012 (as amended). This report recommends that following this consultation, Scrutiny Committee determine whether any recommendations should be made to Cabinet to strengthen the emerging policy approach as outlined.
117. There are no legal problems in doing what is proposed

Risk management

Risk / opportunity	Mitigation
<ul style="list-style-type: none"> • Risk (procedural and financial): the MWLP is found to be unsound at examination 	<ul style="list-style-type: none"> • The risks of the MWLP being found unsound are low, as the appropriate mitigation measures have been employed to ensure that the plan has been drawn up using specialist mineral and waste planning expertise. Consultants have assisted in collation of the evidence base (BGS, Hendeca and BBLP/WSP) which underpins the MWLP, developed the plan's policies and proposals (Hendeca), produced the sustainability appraisal and habitats regulations assessments (LUC) and will continue to be engaged in the next stage of the plan's production (Hendeca); the examination in public. This risk will be managed at service level.
<ul style="list-style-type: none"> • Risk (procedural and reputational): not to proceed to consultation on the publication draft MWLP 	<ul style="list-style-type: none"> • This would leave the council without an up to date minerals and waste planning policy framework and would effectively create a policy vacuum. This would be contrary to the requirements set out by the assistant planning inspector during the core strategy examination, who stated that a MWLP was to be produced. <p>It would also mean that the decision making process on minerals and waste planning developments would not stress the importance of taking into account climate change. This would be contrary to the aims of Herefordshire Council, as set out in its environmental policy.</p> <p>This risk will be managed at service level.</p>
<ul style="list-style-type: none"> • Risk (procedural and financial): the introduction of regulatory changes to the planning system before the MWLP reaches examination in public, which may result in the need to follow a new plan production process. 	<ul style="list-style-type: none"> • If the publication draft MWLP is reported to full council in December, as anticipated, and the recommendation approved to proceed to the next stage of consultation (regulation 19), then the plan can be submitted to the secretary of state in the first quarter of 2021. It is therefore likely that the MWLP will fall into the transitional arrangements which will be set out by government for development plans which have reached this late stage in their production. <p>This risk will be managed at service level.</p>
<ul style="list-style-type: none"> • Risk (procedural): the targets for levels of aggregate production and waste management requirements set out in the MWLP may become increasingly out of date, both during the Plan production process and after the Plan is adopted. 	<ul style="list-style-type: none"> • Resources have been identified to expedite the preparation of the MWLP and to ensure a robust approach has been adopted. Once adopted, the Plan will undergo a 5-yearly review to ensure that it is kept up to date.

The above risks should be entered in the Growth Risk Register.

Consultees

118. Herefordshire Council undertook consultations in 2017 and 2019 to inform the publication draft MWLP, pursuant to the Town and Country Planning (Local Development) (England) Regulations 2012 (regulation 18).
 - The first consultation was undertaken on the MWLP Issues and Options during later summer 2017 over a 6-week period.
 - The second consultation was undertaken on the draft MWLP early in 2019 for a 6-week period.
119. 92 people/organisations made representations overall.
120. A Consultation Statement will be made available at the consultation on the publication draft MWLP (regulation 19) which will set out details of these consultations. It will also show: which bodies and persons were invited to make representation under regulation 18, how those bodies and persons were invited to make such representation; a summary of the main issues raised and how those issues have been addressed in the MWLP.
121. All public involvement in the MWLP's preparation process was carried out following the approach set out in the Council's Statement of Community Involvement (adopted in 2017).
122. The Council has an extensive consultation database, containing over 3,000 contact names. The list includes individual residents, developers, businesses based across the county, parish councils, community and voluntary groups, infrastructure providers, neighbouring authorities, government agencies and elected members.
123. The Council used a range of methods to engage with all potentially interested parties, in order to ensure they had the opportunity to make representations. Stakeholders and local community members were informed by email or letter about ways to get involved in the consultations. Methods of responding, both on and offline were given, in order to reach the broadest audience possible.
124. The following approaches were undertaken:
 - direct mail or email to contacts on the Council's database
 - information made available at libraries and information centres across Herefordshire
 - Cabinet Members' newsletter
 - Herefordshire Council website
 - Herefordshire Council social media
 - presentations and exhibitions
125. Notification was sent to: Parish Councils, specified consultees, all those who had registered an interest in Herefordshire planning, stakeholders, industry contacts, statutory bodies (such as Highways England) and utility companies, neighbouring local planning authorities, agents and land owners. The correspondence included details of where to find further information and how to make representations either online or in writing.
126. All relevant documentation was made available to download on a dedicated Council webpage and in hard copy format at libraries and information centres across the County.

127. 36 responses were submitted to the issues and options consultation in 2017 and 56 responses were submitted to the draft MWLP in 2019. Many individual points were raised to the Plan's contents. The Consultation Statement will set out all points raised and the council's responses to them and how the results of these consultations have informed the MWLP's preparation.
128. In addition to the regulatory consultations, the Issues and Options and draft plan stages of preparation were fully discussed with adjoining planning authorities as part of the statutory Duty to Cooperate. As a result Memoranda of Understanding have been signed between Herefordshire, Gloucestershire, Worcestershire, Shropshire and Powys minerals and waste planning authorities and a Statement of Common Ground is also being produced setting out areas of agreement on cross-boundary matters.
129. Local members were also kept informed of the MWLP's preparation and a minerals and, in addition to mandatory governance processes prior to the two stages of statutory consultation on the Issues and Options report and the draft MWLP, a Waste Standing Panel was formed, which met three times during 2017 and 2018. The views raised at the meetings of the panel were fed into the draft MWLP's preparation.

Appendices

Appendix A: Publication draft Minerals and Waste Local Plan

Appendix B: Supplementary Sites Report

Appendix C: Mineral Needs Assessment 2019

Appendix D: Waste Needs Assessment 2019

Background papers

- Draft Minerals and Waste Local Plan 2018
https://www.herefordshire.gov.uk/download/downloads/id/16729/draft_minerals_and_waste_local_plan_january_2019.pdf
- Annex A to Draft Minerals and Waste Local Plan 2018
https://www.herefordshire.gov.uk/download/downloads/id/16730/draft_minerals_and_waste_local_plan_january_2018_annex_a.pdf
- National Planning Policy Framework 2019
<https://www.gov.uk/government/publications/national-planning-policy-framework--2>
- National Waste Strategy 2018
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765914/resources-waste-strategy-dec-2018.pdf
- Herefordshire Core Strategy 2015
https://www.herefordshire.gov.uk/downloads/download/123/adopted_core_strategy
- Guidance on fracking: developing shale gas in the UK 2019
<https://www.gov.uk/government/publications/about-shale-gas-and-hydraulic-fracturing-fracking/developing-shale-oil-and-gas-in-the-uk>

- MWLP Spatial Context and Sites Report 2018
https://www.herefordshire.gov.uk/download/downloads/id/16838/spatial_context_and_sites_report_2018.pdf
- Mineral safeguarding in England: good practice advice (BGS) 2007
bgs.ac.uk/downloads/home.html
- A Green Future: Our 25 Year Plan to Improve the Environment 2018
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf
- Statement of Community Involvement 2017
https://www.herefordshire.gov.uk/download/downloads/id/1566/statement_of_community_involvement_january_2017.pdf
- Planning for the Future white paper 2020
<https://www.gov.uk/government/consultations/planning-for-the-future>

Glossary of Abbreviations

MWLP: Minerals and Waste Local Plan

MASS: managed aggregate supply system. The underpinning concept behind the managed aggregate supply system is that mineral planning authorities which have adequate resources of aggregates make an appropriate contribution to national as well as local supply, while making due allowance for the need to reduce environmental damage to an acceptable level.

NB: Please note that there is no direct link between this report and another relating to options for providing Herefordshire Council's municipal waste management service in the future. However, subsequent decisions to be made on the waste disposal service will have a more direct link to the policies and proposals of the MWLP.
