

# Submission of Minerals and Waste Local Plan (MWLP)

**Meeting: Cabinet**

**Meeting date: Thursday 23 September 2021**

**Report by: Cabinet member finance, corporate services and planning**

## Classification

Open

## Decision type

Budget and Policy Framework

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

## Wards affected

All wards.

## Purpose

- To consider and agree the schedule of suggested main modifications and minor changes (Appendix A) to the Herefordshire Minerals and Waste Local Plan (MWLP or 'the Plan') development plan document (DPD) (see background papers), which have been produced following the completion of the pre-submission publication period, consideration of duly made representations and subsequent discussions with statutory undertakers; and
- to refer the MWLP, together with the schedule of suggested main modifications and minor changes, to Council with a recommendation that these, along with the Plan's supporting documents (including updates as necessary), be submitted to the Secretary of State for independent examination, in accordance with section 20(1) of the Planning and Compulsory Purchase Act 2004 (as amended) and regulation 22 of the Town and County Planning (Local Planning) (England) Regulations 2012 (as amended); and
- to consider and agree the granting of delegated authority to officers of the council (and their appointed consultants) who will attend the examination to discuss and agree modifications to the MWLP with the Planning Inspector, so that there are no unnecessary

delays to the examination process and to recommend the approval of such delegated powers to Council.

## **Recommendation(s)**

**That:**

- a) the draft MWLP development plan document (see background papers) and the schedule of suggested main modifications and minor changes (Appendix A) be recommended for approval by Council for submission to the Secretary of State for examination in public;**
- b) to agree that the Planning Inspector be invited to recommend any main modifications necessary to the MWLP in order to find it legally compliant and sound; and**
- c) delegated authority be given to the Assistant Director for Regulatory, Environment and Waste and to the Lead Development Manager to agree, with the Planning Inspector, any additional modifications to the MWLP, if it is appropriate and necessary to do so, in order to facilitate efficient progress of the Plan through the examination process. Subsequently, such modifications will be subject to public consultation.**

## **Alternative options**

1. 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's Planning 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.
2. Instead of submitting the MWLP, along with a schedule of suggested main and minor modifications to the Planning Inspector for consideration at the examination, another option would be to alter the text of the Plan and undertake a second regulation 19 (Town and County Planning (Local Planning) (England) Regulations 2012) consultation prior to submission. This option was discussed with the Planning Inspectorate at an Advisory Meeting on the 26 July 2021 and it was considered to be both acceptable and more expedient to continue to the submission stage with the schedule of modifications. (Details about how both the statutory and internal governance consultation requirements have been met during the Plan's development are provided in paragraphs 7-9 and 102-119 below).
3. To undertake a second pre-submission consultation would: significantly delay the progression of the Plan; risk the evidence base which underpins the Plan becoming out of date; mean continued reliance on the out of date saved minerals and waste policies in the Unitary Development Plan; and incur additional consultancy costs.
4. The MWLP and its associated documents are numerous and complex, consequently, minor corrections may come to light following the preparation of this report. Not to delegate authority to make and submit additional minor amendments, to be suggested for consideration at examination, is not recommended because it would be impractical to await a further meeting of Full Council to address small adjustments to the Plan's text.

5. The Planning Inspectorate (at the Advisory Meeting) suggested that approval be sought from Council to give authority to officers to discuss modifications with the Inspector during the forthcoming examination. This is to ensure that these issues can be dealt with expediently. Not to approve this delegation could significantly delay the examination process and would not be in accordance with the advice of the Planning Inspectorate.

## **Key considerations**

6. 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.
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 draft consultation
  - *2021/2 submission and examination in public*
  - *2022 adoption*
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
  - 2020 General Scrutiny Committee
9. Regulation 19 consultation on the Publication Draft MWLP (dated January 2021), its associated reports and accompanying evidence base documents, took place over the period 12 April to 24 May 2021. In addition, interactive mapping of the Plan's proposals was made available on the council's website.
10. Due to Covid restrictions, no face to face consultation events were held. However, a video presentation was made available on the council's website, which provided an overview of the policies and proposals of the Publication Draft MWLP and how to get involved in the consultation.

11. In preparing for examination, the council has reviewed the regulation 19 representations received and considered whether any changes should be made to the MWLP prior to its adoption.

### **Key representations made to the Publication Draft MWLP (Reg. 19) Consultation**

12. 81 representations were made as part of 26 submissions in response to the Publication Draft MWLP; each of which has been reviewed and carefully considered. This report does not address each one, but focusses on those that are considered to raise key matters in relation to the Plan i.e. those that the council considers would be appropriately addressed through main modifications to the MWLP.
13. The suggested main modifications (and minor changes) are proposed to be considered by a Planning Inspector through the examination process. The key matters that have been identified relate to:
  - River Wye Special Area of Conservation (SAC) and River Lugg SAC catchment;
  - impacts on heritage assets;
  - Minerals Safeguarding Areas;
  - Mineral Consultation Areas;
  - minerals safeguarding;
  - level of mineral provision;
  - resource/reserve – terminology;
  - circular economy and resource management;
  - Policy W5
  - Policy W7; and
  - Key Development Criteria

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

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

18. The approach within the MWLP has been to require nutrient neutrality from development proposals within the River Wye SAC generally; it is not limited to the River Lugg catchment. Herefordshire Council has since prepared a note for NE on this matter to enable future discussion, with the current approach retained within the MWLP.
19. It was also agreed to ensure the strengthening of wording with regard to the HRA that is likely to be required for each planning application, for example within the key development criteria. This is set out in the suggested schedule of main modifications. Modifications are also proposed to section 3 of the MWLP, to update it in line with the latest guidance on this matter that is available on the Herefordshire Council website.
20. The Environment Agency has made extensive comment on nutrient neutrality and phosphorous recovery. Whilst it is generally supportive of policies W3 and W4, some of these comments look to address matters that fall beyond the remit of the MWLP or there appears to have been a misunderstanding of the context within which the text is provided.
21. The MWLP has been prepared to play a material role in terms of reducing nutrient release into the River Wye SAC (in its totality), including through: the provisions set out in policies W3 and W4; through its consideration of the potential for phosphate release from minerals and waste developments; and the inclusion of key development criteria to address the issues in conjunction with proposed development. No further edits to the text are considered necessary.

### **Impact on Heritage Assets**

22. In its representation, Historic England (HE) welcomed the additional site assessment work that has been undertaken and recommended that the method used for the assessment of heritage assets should be in line with that set out in HE's Advice Note 3. This, however, is the approach which was used when considering all of the sites in more detail and it has been set out in the Plan's accompanying reports.
23. HE also raised a number of concerns in relation to the proposed site allocations, including an objection to the extension at Leinthall Quarry and recommended that further assessment should be undertaken in the form of detailed Heritage Impact Assessments (HIA) for the mineral sites: Leinthall; Wellington; Upper Lyde and Shobdon. The National Trust also objected to the proposed extension to Leinthall Quarry.
24. An HIA of each of these sites is currently (July to September 2021) being undertaken by Herefordshire Archaeology (Herefordshire Council's county archaeological service). The conclusions of which will be incorporated into the schedule of suggested main modifications.
25. The HIA for the extension proposed at Leinthall Quarry has already been completed and made available to HE to provide comment. Its conclusion comments that:
26. *"There is no indication that any expansion of the quarry will directly affect any known archaeological heritage assets within the proposed expansion area."*

27. *“... However, from certain viewpoints the setting impact upon Croft Ambrey Hillfort is considered to be of moderate-high, (albeit already highly compromised by the presence of the existing quarry).”*
28. *“It may be possible to further limit or obscure some of the direct viewpoints from Croft Ambrey Hillfort by future vegetation management on the hillfort and by planting extra tree cover in the close environs to the proposed quarry site. However, due to the height of the hillfort above the proposed area and existing quarry it will not be possible to completely mitigate the visual impact.”*
29. *“It should be stressed that the existence of the present workings at Leinthall Quarry does already present a large setting issue for the same heritage assets that have been considered within this assessment and future setting issues from the proposed extension should be measured against the setting and visual impacts that have already existed for over seven decades.”*
30. It is concluded that the Leinthall Quarry extension remains an appropriate allocation, albeit that some amendment to the wording of the key development criteria will be proposed.
31. HE raises a number of concerns in relation to non-designated heritage assets, which it recognises *“...can make a positive contribution to the character of our settlements and enrich our sense of place”*. HE advises that *“...the views of your chosen specialist archaeological adviser are sought on these proposed allocations to confirm that the evidence base is sufficiently robust to ensure that any proposed allocation is deliverable in accordance with local and national planning policies.”*
32. The views of Herefordshire County’s Archaeologist and Building Conservation Officer were sought in the preparation of the Publication Draft MWLP, including advice on the wording that is included within the key development criteria. It is believed that the proposed allocations are deliverable and that few further edits to the text of the Plan are required.
33. HE also makes reference to Palaeolithic archaeology and the potential for effects on water sensitive heritage assets to be more overtly recognised within the key development criteria. Proposed modifications to the key development criteria to incorporate these comments will be considered with Herefordshire Archaeology and proposed in an update to the schedule of modifications at Annex A.
34. HE also makes representations in regard to the proposed waste allocations and the potential impact on heritage assets. These allocations make use of land that is already allocated for Strategic Employment Areas or has already hosted some form of built development. In regard to the Strategic Employment Areas, particularly the Rotherwas Industrial Estate (Hereford Enterprise Zone), a substantial amount of heritage assessment work was previously undertaken to enable that allocation to be adopted.
35. The approach within the MWLP has been that these sites provide appropriate locations for new waste treatment development, in principle. Each development proposal will need to demonstrate how it complies with all relevant policy, including that concerned with heritage. Consequently, the proposed allocations are appropriate and deliverable and do not pose an unacceptable risk of material harm to heritage assets. This matter

has been discussed (again) with Herefordshire Archaeology, who continues to support this approach.

36. Representations have been received that text of the MWLP does not recognise the hierarchy of importance for heritage assets, and other environmental designations. This point has been addressed before and the approach remains the same. Hierarchies for designations are set out in national policy and the addressed through policy of the Core Strategy. In short, it is not appropriate or necessary to repeat them within the MWLP; they will continue to apply to any development proposal submitted for determination.

### **Minerals Safeguarding Areas**

37. Some respondents queried why the mapping in relation to mineral resource was different on the interactive mapping (provided on the council's website) to that provided in the MWLP consultation documents, principally Figure 7.
38. Figure 7 within the MWLP presents the Minerals Safeguarding Areas, including railheads. It is introduced by text at paragraph 6.1.12 of the Publication Draft MWLP: *"Figure 7 presents the Minerals Safeguarding Areas for Herefordshire, incorporating: areas of reserve indicated by the British Geological Survey data; surface coal resource areas from the Coal Authority; currently consented quarries and their associated infrastructure; the operating rail head at Moreton-on-Lugg; and the disused railhead at Moreton Business Park. Figure 7 is available in its original A3 format at Annex A, with key policy details included in the interactive mapping available on the Herefordshire Council website."*
39. Whilst the interactive mapping made available on the council's website did present mineral resource, allocated sites and preferred areas of search; it did not include the data layer for the safeguarding areas (including the railheads). This will be amended prior to the examination.

### **Mineral Consultation Areas**

40. Some respondents (particularly from the minerals industry) objected to the absence of buffer zones around the minerals safeguarding areas and a minerals consultation area.
41. The approach to minerals safeguarding was comprehensively addressed in the preparation of the MWLP and it has been corroborated in revised national planning guidance (National Planning Policy Framework 2021, paragraph 210, bullet c), which confirms that the use of mineral consultation areas is primarily for two tier authorities.

### **Policy M2 Safeguarding etc**

42. Some suggested edits were received in representations from the mineral industry to amend policy M2, to incorporate references to economic viability and infrastructure associated with mineral workings. These edits are proposed within the schedule of suggested modifications.

### **Level of mineral provision within MWLP**

43. Representations were received suggesting that the MWLP relies upon the existing levels of imported mineral. This is incorrect.

44. New text is proposed within section 6 of the MWLP to state that policies M3 and M4 have been drafted on the assumption that reserve in Herefordshire supplies 100% of the forecast demand. The word 'reserve' is used deliberately in this proposed modification, as only resource that has permission to be worked can be included in the landbank (see paragraphs 46 and 47 below).
45. In addition, it is proposed that reference to the Local Aggregates Assessment be added to the monitoring schedule presented at Table 3 of the MWLP.

### **Reserve/Resource**

46. Some respondents questioned whether the term 'reserve' had been used correctly throughout the Plan.
47. The MWLP has been checked throughout; it was found that the term 'reserve' has been used when 'resource' would be the correct option. It is proposed that appropriate changes are made to ensure correct term is used in all circumstances.

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

48. The Environment Agency, and other respondents sought greater clarity in regard to the circular economy and policy intent in terms of climate change. Some edits have been proposed throughout the Plan to address these comments.
49. Whilst policy SP1 was generally supported, representations sought greater clarity in the wording used, not least in regard to delivering the circular economy, rather than focussing on climate change. Representations also queried whether the MWLP went far enough to satisfy National Planning Policy Framework policy in regard to promoting the use of secondary and recycled aggregates.
50. The MWLP has been prepared to deliver the waste hierarchy and circular economy within Herefordshire, although these priorities also have to be balanced with enabling sustainable supply of mineral generally, which will continue to rely on raw mineral for the foreseeable future. The evidence base that underpins the minerals policies has considered the potential for secondary/recycled materials.
51. Policy SP1 is extending the remit of a development plan to look beyond just land use policy and setting out the actions that others can play in achieving the desired outcomes. This is explained in the supplementary text. The resource audit is also explained within the supplementary text, albeit the wording within the policy is proposed to be clarified.
52. New text is also proposed at the start of policy SP1, to make explicit reference to the potential for minimal use of primary materials.
53. The Environment Agency has made extensive comment on the circular economy and how it is addressed within the Plan. Many of these comments look to address matters that fall beyond the remit of the MWLP or misunderstand the context within which the text is provided. The MWLP has been prepared to enable the circular economy to be delivered within Herefordshire and further edits to the text are not considered necessary.

### **Policy W5**



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

### **Policy W7**

56. Comment was received that policy W7 subsections 3 and 4 were not clear. It is proposed that these subsections be reformatted within the policy to clarify the intent.

### **Key Development Criteria**

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

### **Other issues raised in representation to the Publication Draft MWLP (Regulation 19) Consultation**

62. Various other matters were raised in the representations received and are proposed to be addressed through the suggested modifications in Appendix A. These include issues such as:
  - reflecting text of the National Planning Policy Framework;
  - missing MWLP objectives and need for a reference to carbon reduction;
  - Policy SP2 and others – amending working from ‘shall be permitted’ to ‘will be supported’; and
  - alignment of MWLP with Herefordshire Council’s Integrated Waste Management Strategy

## **Next Steps**

63. The next step for the Publication Draft MWLP is for it to be submitted for independent examination by a Planning Inspector. The Publication Draft MWLP will be submitted in the same form as it was during the regulation 19 consultation.
64. Any changes that the council considers would be appropriate will be made available for discussion at the examination through the schedule of suggested main modifications and minor changes (Appendix A).
65. Approval will be sought from Council for the emerging MWLP, and its accompanying documents, to proceed to this next stage in the plan making process, as outlined above.
66. Once adopted, the MWLP will form part of the statutory development plan for Herefordshire and will be used as such for the purpose of determining planning applications on minerals and waste matters.

## **Community impact**

67. 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.
68. This report provides Cabinet with the opportunity to comment on how representations to the regulation 19 consultation have been responded to and to recommend the MWLP's approval and progression to its formal submission and examination.
69. Members of Cabinet can help to ensure that representations relating to the key issues set out in this report, including the protection of the environment and historic heritage, have been sufficiently addressed in the proposed main modifications.

## **Environmental Impact**

70. The MWLP has had due regard to the council's environmental policy commitments. Many of them underpin its policies and proposals:
71. *Natural resources are used efficiently.* The National Planning Policy Framework 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 safeguards mineral resources and infrastructure for future uses.
72. *Minimise waste.* The MWLP seeks to deliver the circular economy and promotes the concepts of waste hierarchy. The MWLP's sustainable waste strategy will promote waste prevention and the re-use, recycling or use of waste to recover energy, as well as deliver a decrease in the amount of waste disposed to landfill.

73. 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.
74. *Reduce greenhouse gas emissions.* The built form of waste management facilities may, more obviously, align with the expectations of the MWLP's policy commitment, but mineral workings 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.
75. 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 water source heating and cooling systems).
76. The MWLP will expect increased resource efficiency measures in plant, buildings and operations in order to achieve climate change priorities.
77. *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. An example of how it addresses climate change is; the reclamation of sites, which provides opportunities in assisting ecological networks to be more resilient and 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.
78. *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.
79. *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.
80. 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.
81. *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.

82. 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.
83. 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**

84. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows.
85. 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.
86. 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.
87. 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.
88. 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 (as far as possible) and were made in accordance with the regulatory requirements of the Town and Country Planning (Local Development) (England) Regulations 2012. An Equality Impact Assessment has been produced and is attached at Appendix B. This does not identify any negative impacts and will be kept under review as the MWLP progresses to adoption.

89. In addition, a Consultation Statement (relating to the regulation 19 consultation) will be produced to assist the inspector at the forthcoming examination in public, when determining whether the MWLP has complied with the requirements for public participation and government guidance.
90. Public involvement at all stages of the Plan's production, bar the regulation 19 consultation, was carried out following the approach set out in Herefordshire's Statement of Community Involvement (SCI), 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.
91. The country was in lockdown restrictions due to the Covid-19 pandemic during the regulation 19 MWLP consultation in the spring of 2021. This meant that face to face consultation events could not be held and that paper copies of the Plan documents could not be made available at public libraries or other public venues.
92. To assist those who wanted to comment on the publication draft MWLP, a video was produced and posted on the council's MWLP consultation web page. This provided viewers with a summary of the Plan's strategy, its policies and proposals, as well as information on how to get involved with the consultation.
93. It is acknowledged that those without access to a computer or a smart 'phone may have had difficulties in participating with the regulation 19 consultation, but that there were exceptional circumstances prevailing at the time. In other respects, the consultation was carried out in accordance with the SCI, as far as possible.
94. It is considered that the approach to public engagement throughout the plan-making process has been appropriate and that those with protected characteristics were able to fully engage with it.

## Resource implications

95. The production of the MWLP has been funded through the local plan budget and reserves.
96. There will be a continuing need to fund: the production of suggested updates/modifications to the Sustainability Appraisal (SA) and the Habitats Regulation Assessment (HRA) reports by consultants LUC; the continued work on the MWLP's modifications and its progression through to submission and examination in public (expected in 2022) by Hendeca (specialist minerals and waste planning consultants). This additional funding will also be sourced from local plan reserves.
97. Costs are estimated to be:
- SA/HRA (LUC) £10,000
  - Hendeca £30,000
  - Examination £50,000

The costs of the examination will include: a Programme Officer; the Planning Inspector's time (at £1,000 per day); venue hire; legal advice/assistance; and technical

equipment such as microphones and requirements for optional remote attendance. Costs are based on the estimation that hearings will last for around one week and that the venue will include the main hearing room, plus additional smaller rooms for the Inspector and officers/consultants of the council.

## **Legal implications**

98. The council is required to produce a MWLP (a DPD) as part of the Herefordshire Local Plan. This will form part of the council's policy framework, once adopted.
99. 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, on which Cabinet are required to make recommendations to Council, the adoption thereof being a Council function under Part 3 Section 1 of the constitution.
100. 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 Cabinet determines whether any recommendations should be made to Full Council on the approach to submission, as outlined.
101. There are no legal problems in doing what is proposed.

## **Risk management**

Risk / opportunity	Mitigation
<ul style="list-style-type: none"> <li>• Risk (procedural and financial): the MWLP is found to be unsound at examination.</li> </ul>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
<ul style="list-style-type: none"> <li>• Risk (procedural and reputational): not to proceed to the submission and examination stage of the MWLP's production.</li> </ul>	<ul style="list-style-type: none"> <li>• 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. 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. This risk will be managed at service level.</li> </ul>
<ul style="list-style-type: none"> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• If the publication draft MWLP is reported to full council in October, as anticipated, and the recommendation approved to proceed to submission (regulation 22), then the plan can be submitted to the Secretary of State in the last quarter of 2021. It is therefore likely that the MWLP will fall into transitional arrangements, which will be set out by government for development plans that have reached this late stage in their production. This risk will be managed at service level.</li> </ul>
<ul style="list-style-type: none"> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>

The above risks should be entered in the Strategic Planning Risk Register.

## Consultees

102. Herefordshire Council undertook consultations in 2017 and 2019 to inform the draft MWLP, pursuant to the Town and Country Planning (Local Development) (England) Regulations 2012.
103. The first consultation was undertaken on Issues and Options during late summer 2017, over a 6-week period. The second consultation was carried out on the draft MWLP early in 2019, over a 6-week period. A total of 92 representations were received to these two consultation events.
104. Between April and May 2021 public consultation (regulation 19) on the Publication Draft MWLP took place, which provided the opportunity for representations to be made on legal compliance and soundness of the Plan. The tests of soundness are set out in the National Planning Policy Framework. A Plan should be:
  - positively prepared (i.e. does it meet objectively assessed need for minerals and waste?);
  - justified (i.e. is it based on robust evidence and is it the most appropriate strategy when considered against alternatives);
  - effective (i.e. deliverable, flexible and able to be monitored); and
  - consistent with national policy
105. 26 representations were received, with 81 individual points raised.
106. A Consultation Statement will be made available when the MWLP is submitted for examination. This will set out details of the regulation 19 consultation. It will also show: which bodies and persons were invited to make representations, how those bodies and persons were invited to make such representations; a summary of the main issues raised and the council's responses to them.
107. Public involvement in the MWLP's preparation process (up until regulation 19) was carried out following the approach set out in the council's Statement of Community Involvement (SCI) (2017). The SCI is currently being reviewed and updated and will be made available to the Inspector at the MWLP's examination.
108. The council has 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.
109. The following approaches to consultation were undertaken during the MWLP's preparation:
  - direct mail or email to contacts on the council's database



- information made available at libraries and information centres across Herefordshire (not at regulation 19)
- Cabinet members' newsletter
- Herefordshire Council website
- Herefordshire Council social media
- presentations and exhibitions (not face to face at regulation 19)

110. All relevant documentation was made available to download on a dedicated council webpage.
111. During the last round of public consultation at regulation 19, public restrictions due to Covid-19 meant that the usual face to face consultation events and the placing of paper copies of the MWLP and its accompanying documents in local public places could not take be undertaken. However, to assist in reaching as wide a range of consultees as possible, a video presentation was placed on the council's website which provided: an overview of the Plan; its strategy, policies and proposals; as well as information on how to get involved in the consultation.
112. 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.
113. 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 Historic England), 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.
114. In addition to the regulatory consultations, the issues and options, draft and publication draft MWLP stages of preparation were fully discussed with adjoining planning authorities as part of the statutory duty to cooperate. As a result memoranda of understanding or statements of common ground have been signed between Herefordshire, Gloucestershire, Worcestershire, Shropshire and Powys minerals and waste planning authorities. These will be revised prior to submission to ensure they contain the most up to date information.
115. It is also proposed that statement of common ground will be produced, prior to submission, with Natural England on matters relating to water quality in the River Wye SAC and the MWLP's policies and proposals.
116. Local members have also kept informed during the MWLP's preparation. 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.
117. On 28 September 2020 the publication draft MWLP was considered by General Scrutiny Committee and its recommendations were considered by Cabinet and

subsequently incorporated into the Plan's text prior to regulation 19 consultation earlier this year.

118. Consultation has been undertaken with the council's political groups from 13 - 26 August 2021. Four responses were received.
- Both Cllrs. Andrews and Matthews were happy with the proposed schedule of modifications;
  - Cllr Stark had no concerns since the Publication Draft MWLP has incorporated the alterations suggested by General Scrutiny Committee in September 2020
  - Cllr Watson made three points: a) questioning the use of the word "alleviate" in MM7.f; b) questioning the use of the word "granted" in MM7.s; and c) the need to remove the words "if not betterment" from MC3.p.
119. Cllr Watson's comments are accepted. In reference to the three points raised: a) "alleviate" has been altered to "address" as it is a more appropriate word to use; b) "granted" has been changed to "support" to build consistency throughout the Plan and to reduce the potential for it to be thought that "support" is a lesser level than "granted", which it is not; and c) it was an error for 'betterment' phraseology to have been used and this has therefore been removed.
120. The above comments will be reported to Cabinet.

## Appendices

Appendix A: Draft Schedule of suggested Main Modifications and Minor Changes (August 2021)

Appendix B: Equality Impact Assessment – Submission MWLP (August 2021)

## Background papers

- [Statement of Community Involvement \(2017\)](#)
- [Publication Draft MWLP \(January 2021\)](#)
- [Annex A to Publication Draft MWLP \(January 2021\)](#)
- [Allocated Sites Appendix to Publication Draft MWLP \(January 2021\)](#)

## Glossary of Abbreviations

DPD: Development Plan Document

HE: Historic England

HIA: Historic Impact Assessment

HRA: Habitat Regulations Assessment

LUC: Name of consultancy producing Sustainability Appraisal and Habitats Regulations reports on the MWLP (previously known as Land Use Consultants)

MWLP: Minerals and Waste Local Plan

NE: Natural England

SA: Sustainability Appraisal

SAC: Special Area of Conservation

SCI: Statement of Community Involvement