

**Herefordshire Minerals & Waste Local Plan
Examination – November 2022**

Statement of Common Ground

Between

**Natural England and
Herefordshire Council**

Date: 25 October 2022

1. Introduction

- 1.1 The geographical extent to which this document relates is the administrative area of Herefordshire Council (HC).
- 1.2 This Statement of Common Ground relates to the Herefordshire Council's Minerals and Waste Local Plan ('MWLP' or 'the Plan') and representations made by Natural England (NE) following correspondence and discussions between representatives of the two organisations between August and October 2022.

2. Background

- 2.1 A letter from NE to HC dated 6 September 2022 (see Appendix A) sets out NE's position on the approach that HC has taken in respect of nutrient neutrality in the MWLP.
- 2.2 Officers from HC, and representatives of the Council's two consultants 'Hendeca' and 'LUC', who have prepared the MWLP and its Habitats Regulations Assessment reports, held an online meeting with a representative from NE on 10 October 2022. NE's position statement (Appendix A) formed the basis of the discussion. During the meeting, the group identified issues on which there was agreement and sought to resolve areas where NE had remaining concerns over the wording of the Plan.
- 2.3 At the end of the meeting, Natural England stated that additional internal discussions would be held on certain points and that the results of these would be communicated to Herefordshire Council via email over the subsequent two days. These comments were subsequently received by HC, which confirmed that NE's original advice given on 6 September 2022 still stands. In addition, NE reiterated that it is HC's own decision to apply nutrient neutrality across the wider River Wye SAC catchment, rather than this being progressed subject to the advice of NE. This point is examined further below.
- 2.4 Herefordshire Council agreed to consider whether further changes to the text of the Plan could be suggested to the Inspectors at this stage in the production process, in order to reach a mutually acceptable form of wording. Any alterations, as detailed in Table 1 below are not considered to represent changes that would have a material effect on the meaning or direction of the MWLP or its policies. Instead, they represent an opportunity to make minor alterations to the Plan to improve its clarity and are commended to the Inspectors on that basis.

3. Areas of Agreement and Disagreement

- 3.1 The table below provides Inspectors with a summary of matters of agreement and disagreement between Natural England and Herefordshire Council.
- 3.2 References to paragraphs and policies refer to the Publication Draft WMLP (Examination Library ref. [D3.37](#)) and should also be read in conjunction with the Schedule of Proposed Main Modifications and Minor Changes (Examination Library ref. [D3.75](#)).

Table 1: Summary of issues between Natural England (NE) and Herefordshire Council (HC) on nutrient neutrality in the MWLP

<p>MWLP Paragraph or Policy</p>	<p>Summary of Natural England’s representation</p>	<p>Herefordshire Council’s response</p>	<p>Resulting amendment suggested? (deleted text is shown by a strikethrough and new text is <u>underlined</u>)</p>	<p>Common ground established?</p>
<p>Key development criteria (KDC) of policies M3, M4 and M5 for the winning and working of minerals, where allocations are in catchment of River Wye SAC:</p> <ul style="list-style-type: none"> • Callow Delve • Perton Quarry • Shobdon Quarry • Upper Lyde Quarry • Wellington Quarry • Westonhill Wood Delves <p>To be read with Table 2 of <i>Schedule of Main Modifications and Minor Changes proposed Pre-Examination</i> (Examination Library ref. D3.75)</p> <p><i><u>‘River Wye SAC...Development should will be required to demonstrate at least</u></i></p>	<p>Minerals workings should not be required to be nutrient neutral.</p> <p>The main risk is related to loss of sediments/soils during construction and operation. Requirements for mitigation measures would be more appropriate e.g. best practice for handling soils.</p> <p>Post restoration risks would be controlled through other permissions or regulations, including HRAs.</p> <p>It is unclear how nutrient neutrality would be demonstrated. With no current calculator for minerals development, this may be onerously challenging and technical.</p> <p>‘Nutrient neutrality’ is the term that NE use nationally for a specific concept in relation to residential development in areas which are failing their water quality targets. To extend this to minerals development risks undermining the national approach.</p>	<p>The MWLP’s comprehensive approach, ensures that nutrient pollution in the Wye SAC catchment would not be made worse by minerals development, including restoration.</p> <p>The KDC ensure that all possible development scenarios are covered, thus providing protection to the Wye SAC catchment’s watercourses.</p> <p>The demonstration of nutrient increases and the mitigation measures that could be put in place to eliminate pathways of pollution to the SAC catchment, for example, need not be problematic or onerous for prospective developers.</p> <p>The requirement for applicants to demonstrate proposed any potential nutrient increases is not limited to residential development. Applications for all other types of development are also required to demonstrate that they are not adding to the nutrient load of the failing SAC catchments in order for planning permission to be granted.</p>	<p>None proposed.</p>	<p>No, although NE and HC both have the same aim of seeking to address nutrient pollution in sensitive watercourses.</p> <p>NE did not advise HC to apply ‘nutrient neutrality’ in its MWLP policies. This is HC’s decision.</p> <p>NE considers that it would be preferable for HC to use alternative wording in the Plan to ensure no net nutrient increases from minerals developments.</p>

MWLP Paragraph or Policy	Summary of Natural England's representation	Herefordshire Council's response	Resulting amendment suggested? <small>(deleted text is shown by a strikethrough and new text is underlined)</small>	Common ground established?
<i>nutrient neutrality or betterment.</i>		<p>The proposed main modifications to the MWLP include a new glossary definition of 'nutrient neutrality' to clarify how the term is to be used and what it means.</p> <p>To use a variety of wording in the MWLP, including 'nutrient neutrality' and other different wording which would mean the same thing would be confusing for the reader and create inconsistencies throughout the Plan document.</p>		
<p>Policy W3: agricultural waste management.</p> <p>Subsection 3 of the proposed modified version of this policy reads: <i>Policy W3: Agricultural waste management... 3. All development proposals will be required to demonstrate delivery of a net reduction in nutrient discharges contributing to at least nutrient neutrality within the River Wye SAC.</i></p>	<p>NE agrees with the requirement for nutrient neutrality in Policy W3.</p> <p>There is a more direct link to impacts, and it will be possible to assess the impacts.</p> <p>HC is producing a Supplementary Planning Document for agricultural developments, which includes a nutrient calculator that developers can use in order to assess their impacts and inform nutrient neutrality.</p>	<p>Noted.</p> <p>To have a reference to nutrient neutrality in W3 but to consider changes to the wording of the KDC for policies M3, M4 and M5 to remove references to nutrient neutrality, as suggested by NE, would cause confusion and create an inconsistent approach throughout the Plan.</p>	No	Yes

<p style="text-align: center;">MWLP Paragraph or Policy</p>	<p style="text-align: center;">Summary of Natural England's representation</p>	<p style="text-align: center;">Herefordshire Council's response</p>	<p style="text-align: center;">Resulting amendment suggested?</p> <p style="text-align: center;">(deleted text is shown by a strikethrough and new text is <u>underlined</u>)</p>	<p style="text-align: center;">Common ground established?</p>
<p>Policy W4: wastewater management.</p> <p>The following is the proposed modified version of the policy:</p> <p><i>Policy W4: Wastewater management Planning permission will be granted to be supported for the statutory water and sewerage undertaker to extend, upgrade, or make provision for new infrastructure necessary to ensure the statutory undertaker can continue to undertake its duty to supply potable water and treat foul flows. Works undertaken should contribute to achieving will be required to demonstrate at least nutrient neutrality or betterment within the</i></p>	<p>NE suggests that the justification text for this policy should be amended to include clarification of the scenarios where this policy may be applied.</p> <p>Concern was expressed that it would be requiring wastewater companies to make all their discharges nutrient neutral, including existing ones.</p> <p>NE expressed concern over the inclusion of the term 'nutrient neutrality'.</p>	<p>Policy W4 will only relate to new development at wastewater treatment works which require planning permission and which might result in phosphate increases. Such development would be required to demonstrate nutrient neutrality if they are located in the Wye SAC catchment.</p> <p>It was acknowledged that some additional wording to the justification text may assist in clarifying how the policy is to be applied.</p> <p>HC considers the use of the term 'nutrient neutrality' to be appropriate.</p>	<p>Add new sentence at the end of paragraph 7.2.32: <u>'The requirement within policy W4. to achieve at least nutrient neutrality. is applicable to the proposed development.'</u></p>	<p>In part.</p> <p>The proposed modification is considered to resolve NE's concern over the clarity of the policy.</p> <p>Concerns remain over the use of the term 'nutrient neutrality'.</p>

<p style="text-align: center;">MWLP Paragraph or Policy</p>	<p style="text-align: center;">Summary of Natural England's representation</p>	<p style="text-align: center;">Herefordshire Council's response</p>	<p style="text-align: center;">Resulting amendment suggested? (deleted text is shown by a strikethrough and new text is <u>underlined</u>)</p>	<p style="text-align: center;">Common ground established?</p>
<p><i>River Wye SAC. Wherever practical and economical, biogas should be recovered for use as an energy source and phosphorus should be recovered for beneficial uses.</i></p>				
<p>Application of 'nutrient neutrality' across the whole of the Wye SAC catchment in Herefordshire.</p>	<p>Applying nutrient neutrality across the whole of the Wye SAC catchment in Herefordshire, as opposed solely to parts of the SAC which are failing their water quality objectives has not been advised by NE.</p> <p>Whilst the reasons behind the MWLP's policies are understood, this would be contrary to the approach taken nationally to nutrient neutrality by NE.</p>	<p>It is a political priority of Herefordshire Council to ensure that the water quality of the watercourses in the Wye SAC catchment is not further degraded by nutrient pollution from new developments. This is why both the MWLP and the emerging Local Plan are aiming to apply the principles of nutrient neutrality across the whole catchment – backed by the fact that other parts of the River Wye SAC catchment (as opposed to just the River Lugg) are close to failing their water quality objectives.</p>	<p>No</p>	<p>Yes.</p> <p>NE and HC agree that, in this policy document, the decision to apply a nutrient neutrality approach across the Wye catchment in its entirety is being taken by HC.</p>

4. Signatures



Tracey Coleman (Interim Service Director Planning and Regulatory Services),
Herefordshire Council

Date: 25 October 2022



Joanna Redgwell (Manager, Planning for Better Environment, West Midlands team),
Natural England

Date: 19 October 2022

Appendix A

Letter from Natural England to Herefordshire Council dated 6 September 2022

(See page below)

Date: 06 September 2022



Herefordshire Council
Plough Lane
Hereford
HR4 0LE

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ
T 0300 060 3900

BY EMAIL ONLY

Dear Victoria Eaton,

Planning consultation: Herefordshire Minerals and Waste Local Plan.

The following letter outlines Natural England's position on the approach that Herefordshire Council has taken regarding Nutrient Neutrality in the Minerals and Waste Local Plan.

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

Summary

Natural England advise that the nutrient neutrality requirement should be removed from policies W4 Wastewater management and M3, M4 and M5 on minerals workings. We agree with requiring NN in policy W3 Agricultural waste, and note the council's decision to apply this across the Wye catchment.

Since discussions regarding the plan in July 2021, NE's position on nutrient neutrality (NN) has moved on. NN has emerged as a way to mitigate the impacts of residential development in 'failing' catchments. Housing developers can calculate their phosphate (or nitrogen) output using a simple calculator and offset that. In April 22, NE rolled this out as a national approach across 'failing' Habitats sites catchments in England. Herefordshire Council is also currently developing a calculator for agricultural applications, through its Agriculture SPD. There are concerns that applying NN to matters other than these would not be possible, and also is not appropriate and could risk undermining the national approach.

Policy W4: Wastewater management

It is not clear what aspect of this policy NN would be applied to. If the policy is requiring that the WwTW discharge should be made nutrient neutral, then that would be a significant change and

counter to NE's current advice. The current approach requires developments wishing to connect up to WwTW to be made nutrient neutral. This policy would counter that, by requiring the WwTW discharge to be made NN.

In most situations the only planning permission the undertaker needs, would be for the construction works. These types of construction activities wouldn't typically generate P. The main potential risk would be around the loss of sediments / soils during construction and operation, because phosphate binds to strongly to sediment, and particularly because the works will be in very close proximity to a watercourse. This should be dealt with through a requirement for appropriate measures to avoid impacts, such as the best practice handling of soils to reduce losses.

[Guidance for Successful Reclamation of Mineral and Waste sites](#)

[Good Practice Guide for Handling Soils.](#)

We would query whether this policy is aimed more at getting improvements to WwTW, to contribute towards a reduction in phosphate in the river, and to benefit the river restoration, rather than being fully used up by new development. We would recommend a conversation with DCWW regarding this.

Policies M3 Winning and working of sand and gravel, M4 Winning and working of crushed rock (limestone) & M5 Winning and working of sandstone

It is not felt that that minerals workings should be asked to be nutrient neutral. The updated HRA highlights some possible sources of P –

5.22 Mineral working proposals would not normally be considered as a source of phosphate, as they do not generate wastewater from residential occupancy and there is no mining of phosphate rock in Herefordshire (see also 'Avoidance and Mitigation' section below). Therefore, while the above policies and site allocations could result in some discharges/run-off to the River Wye and River Lugg, these are unlikely to adversely affect the integrity of the SAC because any discharges or run-off will not be high in phosphates.

However, the Preparing the Publication Draft MWLP document recognises that mineral working can result in a change in agricultural land, throughout the extraction process: stripping away topsoil and subsoil; extracting the mineral; and restoration. Restoration proposals involving schemes that would draw in a lot of visitors to the area could also result in phosphate releases (from wastewater). Restoration to agriculture could also result in phosphate releases, if too much of the nutrient is added to the land.

The main potential risk is around the loss of sediments / soils during construction and operation. This should be dealt with through a requirement for appropriate measures to avoid impacts, such as the best practice handling of soils to reduce losses.

The risks post-restoration that are presented in the second half of the extract would be controlled through other permissions and regulations. The application of nutrients after restoring a site to agriculture should be controlled through agricultural regulations. Regarding recreational use leading to an increase in sewage, we would question this, unless there are plans to create a new recreation destination. If these sorts of aspirations emerged in the future then other permissions will be required, which would be required to have their own assessments, including HRAs.

Furthermore, it is not clear how NN from minerals workings could actually be done. There is no current calculator, so it would need a bespoke approach to quantify how much P the proposal would be generating, which is the first step in knowing how much to offset. This would be challenging and technical undertaking, and we would want to be sure it was absolutely necessary.

W3 Agricultural waste management

We are satisfied that nutrient neutrality is more appropriate here and satisfies with the changes put forward in the main modifications.

Applying nutrient neutrality across the Wye catchment

Regarding the Council's paper on *Nutrient neutrality – approach in the MWLP*; if the council wishes to take this approach then this is the council's decision. As a part of your evidence you may wish to speak to the Environment Agency as there have been some exceedances seen on the Wye very recently.

Yours sincerely

Rebecca Underdown
West Midlands Area Team

Appendix B

Notes of Meeting with Natural England on 10 October 2022

(See page below)

Notes from Meeting between Natural England and Herefordshire Council on 10 October 2022

Attendees:

Hayley Fleming (Senior Adviser, Planning for a Better Environment Team) Natural England (NE)
Kirsten Berry (Director) Hendeca (Council's consultants)
David Green, LUC (Council's consultants)
Kevin Singleton (Strategic Planning Manager), Herefordshire Council (HC)
Victoria Eaton (Senior Planning Officer), Herefordshire Council

1. Background

- 1.1 The purpose of the meeting was to discuss matters raised in [Natural England's position statement dated 6 Oct 2022](#) in relation to nutrient neutrality in the Minerals and Waste Local Plan (MWLP or the Plan).
- 2.1 The group identified issues on which there was agreement and sought to resolve areas where NE had remaining concerns over the wording of the Plan.

2. Issues Discussed

Removal of requirement for nutrient neutrality from the key development criteria relating to policies M3, M4 & M5

- 2.1 These policies relate to the winning and working of sand and gravel, crushed rock and building stone and it is in the key development criteria (KDC) that there are references to nutrient neutrality relating to development proposals in the River Wye Special Area of Conservation (SAC).
- 2.2 The KDC in the publication draft version of the Plan state that development in the catchment of the River Wye SAC '**...should demonstrate nutrient neutrality or betterment.**' Following representations made by NE (and others) to the regulation 19 consultation, the following suggested modifications of these section of the KDC have been proposed to the Inspectors: '**...will be required to demonstrate at least nutrient neutrality.**'
- 2.3 NE expressed concern over the explicit references to 'nutrient neutrality' in the KDC of policies M3, M4 and M5. NE also questioned the circumstances in which minerals developments might be the source of increased nutrients that would require offsetting, and how this would be demonstrated.
- 2.4 HC explained that the aim of the MWLP was to ensure a comprehensive approach which would be able to ensure that nutrient pollution in the Wye SAC catchment would not be made worse by proposals for minerals developments, including their restoration. It is impossible to predict what such schemes might entail, but they could include soil stripping, or restoration to agriculture or to tourism, which may result in nutrient releases. The wording of the KDC will ensure that all possible scenarios are covered, thus providing protection to the SAC catchment's watercourses.

- 2.5 HC considers that the way prospective developers could demonstrate the possible nutrient increases, how these could be offset, or what mitigation measures could be put in place to eliminate pathways of pollution to the SAC catchment, for example, need not be problematic. Whilst it is recognised that NE has a national phosphate calculator for use in relation to residential developments and HC is producing a Supplementary Planning Document for agricultural developments, those applicants for other development types must also be required to demonstrate that they are not adding to the nutrient load of the SAC catchment in order for planning permission to be granted.
- 2.6 Whilst both NE and HC are aiming to avoid the situation where new developments cause increased nutrient pollution in watercourses in the SAC catchment. NE considers that 'nutrient neutrality' is a specific concept that has been carefully developed and which is being rolled out nationally in relation to development in areas which are failing their water quality targets. To extend this concept to other developments, like minerals, could risk undermining the national approach. It would be preferable to NE if the term 'nutrient neutrality' could be replaced with other wording which would have the same effect; *...avoidance of pollution through restricting pathways...demonstration of no impact...phosphate assessments...no net phosphate*, for example.
- 2.7 NE was directed to the glossary of the MWLP, which includes proposed modifications that introduce a definition of 'nutrient neutrality'. This makes it clear how the term is to be used and what it means. NE expressed concern that this would be introducing a different definition from that used nationally by NE.
- 2.8 If new alternative wording to replace the term 'nutrient neutrality' were to be proposed through modifications, HC stressed that this would need to be used throughout the MWLP. The fact that NE have expressed support for the term 'nutrient neutrality' in policy W3 (see below) would complicate this. It would be confusing and lacking in consistency to have two different terminologies for the same concept within the Plan.
- 2.9 HC stressed that the current poor state of water quality in Herefordshire's watercourses is of great political concern to Herefordshire Council and that including a requirement for nutrient neutrality across the whole of the Wye SAC catchment, not only in the failing areas, within the MWLP policies was specifically requested by local members during the Plan's production.

Policy W4: wastewater management and the application of nutrient neutrality

- 2.10 The following is a tracked changes version of the text of Policy W4, with proposed main modifications included:
Policy W4: Wastewater management
Planning permission will ~~be granted to~~ supported for the statutory water and sewerage undertaker to extend, upgrade, or make provision for new infrastructure necessary to ensure the statutory undertaker can continue to undertake its duty to supply potable water and treat foul flows. Works undertaken ~~should contribute to achieving~~ will be required to demonstrate at least nutrient neutrality ~~or betterment~~ within the River Wye SAC. Wherever practical and economical, biogas should be recovered for use as an energy source and phosphorus should be recovered for beneficial uses.
- 2.11 NE asked for clarification of scenarios where this policy would be applied. Concern was expressed that it would be requiring wastewater companies to make all their discharges nutrient neutral, including existing ones. HC explained that W4 will only relate only to new developments at wastewater treatment works which require planning permission. There

may, in reality, be only a few instances where such proposals might result in phosphate increases. However, the policy would ensure that, in such circumstances, the developments would be required to demonstrate that they are at least nutrient neutral if they are located in the Wye SAC catchment.

- 2.12 Again, NE expressed concern over the terminology of 'nutrient neutrality', rather than with the aims of the policy *per se*.

Policy W3: agricultural waste and nutrient neutrality

- 2.13 The following is a tracked changes version of Policy W3, with proposed main modifications included:

Policy W3: Agricultural waste management

1. Planning permission for livestock units on agricultural holdings will be supported where it is demonstrated through a waste management method statement that:

a. for non-EIA development, both natural and non-natural wastes generated by the proposed development will be appropriately managed both on and off-site; or

b. for EIA development, both natural and non-natural wastes generated by the whole agricultural unit will be appropriately managed both on and off-site.

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

3. All development proposals will be required to demonstrate ~~delivery of a net reduction in nutrient discharges contributing to~~ at least nutrient neutrality within the River Wye SAC.

- 2.14 NE's position statement was clear that they agreed with the requirement for nutrient neutrality in Policy W3. No indication was given at the meeting that this opinion had changed.

Application of Nutrient Neutrality across the Wye SAC catchment in Herefordshire

- 2.15 NE's position was reiterated: if the Council wishes to take this approach, then it is their decision.
- 2.16 HC again explained that it is a political priority of Herefordshire Council to ensure that the water quality of the watercourses in the Wye SAC catchment is not further degraded by nutrient pollution from new developments. This is why the MWLP and the emerging Local Plan are aiming to apply the principles of nutrient neutrality across the whole catchment – backed by the fact that parts of the River Wye itself (as opposed to just the River Lugg) are close to failing their water quality objectives.

3 Next Steps

- 3.1 It was decided that NE would have further internal discussions, including with Simon Thompson who is the national lead on nutrient neutrality, and provide further comments to HC on this matter by 12 Oct.
- 3.2 A Statement of Common Ground will be drawn up which details the areas of agreement and disagreement (if any remain) between NE and HC, then signed by both parties and submitted to the Inspectors by 28 October 2022.