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## Statement prepared by Gloucestershire County Council | May 2019

### Main Matter 1 | Duty to Co-operate and Legal Issues

#### Duty to Co-operate

##### Question 1:

Has the Council engaged constructively, actively and on an ongoing basis with all relevant organisations on strategic matters of relevance to the plan's preparation, as required by the Duty to Co-operate (under s 20(5)(c) and 33A)? On which issues has co-operation taken place? How was co-operation carried out and with what results? Has this been documented? Are there any outstanding issues?

1. Yes – the County Council has engaged constructively, actively and on an ongoing basis with respect to plan making and statutory Duty to Co-operate requirements. A Duty to Co-operate (DtC) Statement has been prepared, which presents a comprehensive review of this matter ([SUB 010](#)). The DtC Statement identified the following five strategic matters of relevance to the plan (section 4, [SUB 010](#)): -
  - DtC a | facilitating a steady and adequate supply of crushed rock
  - DtC b | identifying allocations for the future of working of crushed rock;
  - DtC c | facilitating a steady and adequate supply of land-won sand and gravel;
  - DtC d | identifying allocations for the future of working of sand & gravel; and
  - DtC e | effectively safeguarding mineral resources and mineral infrastructure.
2. For all strategic matters, co-operation has taken place to tackle and seek to address plan-making issues. Section 5 of the DtC Statement ([SUB 010](#)) provides a detailed schedule of specific collaborative activities with relevant organisations and summaries of key actions and outcomes related to the plan.
3. The DtC Statement appendices contain a series of Memorandum of Understanding (MoUs) with Gloucestershire's Districts and neighbouring or nearby Council's that share at least one of the plan's strategic matters (appendices, [SUB 010](#)). The MoUs support collaborative activities

involving the County Council by clearly articulating agreements about how signatories will work together to resolve strategic planning issues. As of May 2019 draft MoUs are in place and these are being followed by officers engaged in ongoing planning work. Final MoUs will be issued once all parties complete the sign-off through their elected members and / or senior management.

4. Therefore the MPA considers that there are no outstanding matters with regards DtC within context of the legal requirements under 20(5)(c) and 33A.

#### Question 2:

**How has the Duty to Co-operate been met with regard to the spatial plans of the constituent City, Borough and District Councils and neighbouring Councils?**

5. A Duty to Co-operate (DtC) Statement to accompany the plan provides a comprehensive review of the County Council's constructive, active and ongoing engagement in DtC matters including with the spatial plans of constituent City, Borough and District Councils and neighbouring Councils ([SUB 010](#)). The statement shows that the County Council has actively participated in the preparation of emerging plans and proposals of Gloucestershire's Councils and those in neighbouring authorities focused on minerals (and waste) matters at the strategic level and local level where it occurs within the sphere of influence of Gloucestershire. The outcome of these DtC activities has also been reported (section 5, [SUB 010](#)).
6. At the strategic level the County Council has also engaged in the production of a series of Memorandum's of Understanding (MoUs) with Gloucestershire's Councils and neighbouring Councils (appendices, [SUB 010](#)). These emerging documents establish an agreed framework that sets out the roles and responsibilities as understood by participating bodies, to aid future collaborative working on strategic minerals planning matters. For neighbouring Councils this includes: - a MoU between Gloucestershire and the West of England Authorities<sup>1</sup> (appendix 5, [SUB 010](#)); a MoU between Gloucestershire, Swindon Borough, Oxfordshire and Wiltshire (appendix 3; [SUB 010](#)); and a MoU between Gloucestershire, Herefordshire and Worcestershire (appendix 4, [SUB 010](#)).

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<sup>1</sup> The 'West of England' Authorities include: - Bath & North East Somerset Council, Bristol City Council, North Somerset Council and South Gloucestershire Council

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7. In addition, the County Council has been an active participant in a Gloucestershire-wide MoU signed up to by all seven local Councils: – Gloucestershire County Council; Cheltenham Borough Council; Cotswold District Council; Forest of Dean District Council; Gloucester City Council; Stroud District Council; and Tewkesbury Borough Council (appendix 2, [SUB 010](#)). This document was last reviewed in 2017. It incorporates protecting important mineral resources from unnecessary sterilisation and safeguarding minerals (and waste) infrastructure from incompatible development as strategic issues and priorities for future planning, both development management and plan making throughout Gloucestershire.

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

#### **Question 3:**

**Has the Plan been prepared in accordance with the Local Development Scheme including content and timescale?**

8. Yes – the County Council can confirm the plan has been prepared in accordance with the most recently adopted 9<sup>th</sup> Gloucestershire Minerals & Waste Development Scheme 2018 – 2021 (MWDS) ([SUB 011](#)). The MWDS advises that the Minerals Local Plan (Regulation 19 | Publication) stage would commence public inspection during Q1 – 2018/19 (Apr-Jun 2018). The Publication plan underwent public inspection between May and July 2018 (page 34, [SUB 006](#)). Remaining plan preparation progress will be reported within the next Gloucestershire Authority Monitoring Report (AMR), which the County Council aims to publish later in 2019.

#### **Question 4:**

**Has the Plan been prepared in compliance with the adopted Statement of Community Involvement (SCI), allowing for effective engagement of all interested parties and meeting the minimum consultation requirements set out in the regulations?**

9. Yes – the County Council is of the view that the plan has been prepared in compliance with the adopted Gloucestershire SCI (1<sup>st</sup> Review) ([SUB 009](#)). A Regulation 22 Consultation Statement

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has been prepared that presents evidence of the Council's consultation activities in respect of the plan and the SCI. A legal compliance self-assessment checklist for the plan has also been prepared ([SUB 013](#)). This provides details of how the plan's consultation has met the requirements set out in regulations. In addition, a series of consultation statements have been published these explain the consultation process undertaken during key stages of plan preparation and are further evidence of compliance with the SCI and the regulations ([SUB 006](#), [SUB 025](#) and [SUB 030](#)).

#### Question 5:

**Is it clear that the Plan accords with the advice provided in paragraph 214 of the National Planning Policy Framework (July 2018) in that the policies in the previous National Planning Policy Framework (March 2012) (NPPF) will apply for the purposes of the Examination of the Plan? Would an additional modification be required in this regard?**

10. Yes – the County Council is of the view that the plan accords with national policy as set out under paragraph 214 of the NPPF 2018 ([PSD3](#)). This advises that for the purposes of examining plans, where they are submitted on / or before 24<sup>th</sup> January 2019, the policies of the NPPF 2012 would apply ([PSD2](#)).
11. The plan has been prepared in accordance with NPPF 12 ([PSD2](#)) and all references to national planning policy contained within it are concerned with this document. The County Council can confirm that it submitted the plan to the Secretary of State on 21<sup>st</sup> December 2018.
12. A proposed Additional Modification (PAM) has also been put forward to insert '2012' after all NPPF references throughout the plan (PAM 51, [EX5b](#)). This is to avoid confusion as to which version of the NPPF has been used.

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**Question 6:**

Has the Council carried out a Sustainability Appraisal (SA) and prepared a report on the findings of the appraisal? Is there clear evidence to indicate why, having considered reasonable alternatives, the strategy in the Plan is the most appropriate response? Does the methodology conform to that in the National Planning Policy Framework (March 2012) (NPPF) and Planning Policy Guidance (PPG)?

13. An SA Report to accompany the MLP has been prepared. It is entitled '*Minerals Local Plan for Gloucestershire (2018-2031): Publication Plan, Sustainability Appraisal including Strategic Environmental Assessment (April 2018)*' ([SUB 003](#)).
14. Appendix 2 of the SA Report sets out the reasonable alternatives considered at each stage of MLP preparation. It explains the evolution of the plan from the Issues and Options stage in 2005-2007, through preferred options and draft version of the plan to the Publication Draft plan in 2018. This appendix sets out the evolution of various elements of the plan in turn, such as the time period for the plan, the vision and objectives, policies and spatial options. The information contained in Appendix 2 sets out why the Council considered the selected approach to each element (and therefore the overall strategy in the Plan) to be the most appropriate in light of reasonable alternatives.
15. The SA was undertaken in line with national policy contained in NPPF 2012 ([PSD2](#)) and also national planning practice guidance (PPG) and these are referred to throughout the document. The NPPF 2012 requires planning policies to be subject to a sustainability appraisal which meets the requirements of the European Directive on strategic environmental assessment. Table 1.1 of the SA Report signposts the relevant parts of the report where each requirement of the SEA Directive has been met. The NPPF 2012 and PPG also require the SA to consider the likely effects of the MLP on environmental, economic and social factors. The SA framework set out in Table 4.2 of the SA Report includes objectives covering the environment, social and economic factors, therefore ensuring these were all considered in assessments.
16. The PPG covers all stages of SA. Chapter 2 (Methodology) of the SA Report sets out how these stages were undertaken for the SA of the MLP. For example, for Stage B the SA describes the range of reasonable alternatives assessed at each stage of the SA and how these evolved through the development of the plan.

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The SA was undertaken by experienced practitioners, who contributed to the Government's early guidance on SA of Regional Spatial Strategies and Local Development Documents (2005). This early guidance informed current guidance, including the PPG.

#### Question 7:

**Is the Plan consistent with national policy, including the NPPF and PPG? Are there any significant departures from national policy? If so, have they been justified?**

17. Yes – it is the view of the County Council that the plan is consistent with national policy and planning guidance and does not contain any significant departures from it. A comprehensive review and demonstration of evidence in respect of this matter has been prepared within the Soundness Self-assessment Checklist ([SUB 014](#)); Legal Compliance Self-assessment Checklist ([SUB 013](#)) and Duty to Co-operate (DtC) Statement ([SUB 010](#)).

#### Question 8:

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

18. Yes – it is the view of the County Council that the plan has complied with the 2004 Act and 2012 Regulations in terms of publishing and making available prescribed documents. Evidence of this is signposted within the Legal Compliance Self-assessment Checklist ([SUB 013](#)). Relevant detailed are also set out in the Minerals Local Plan for Gloucestershire (2018 – 2032) (Regulation 19) Statement of the Representations Procedure and Availability of Documents, May 2018 ([SUB 025](#)).

**Question 9:**

**How does the Plan secure development that contributes to the mitigation of, and adaptation to, climate change?**

19. The plan has sought to secure contributions to climate change mitigation and adaption with new development through a number of policy measures. Evidence of this has been detailed in the submitted Addendum to the Supporting Evidence Paper (section 2, [SUB 018](#)). In particular, table 1 of the paper sets out a policy review in respect of the provisions / requirements linked to the delivery of climate change actions. It also considers whether envisaged policy contributions will support adaption to and / or mitigation of climate change.

**Question 10:**

**How have issues of equality been addressed in the Plan?**

20. The County Council considers that issues of equality have been addressed within preparation of the plan. A Due Regard statement to meet section 149 of the Equalities Act 2010 has been submitted ([SUB 012](#)). This sets out evidence of how consideration has been given to groups with protected characteristics.

**Conservation of Habitats and Species Regulations 2017****Question 11:**

**Does the Plan meet the requirements of the Conservation of Habitats and Species Regulations 2017, including any relevant case law [in particular the ruling of 12 April 2018 by the Court of Justice of the European Union (CJEU) People over Wind, Peter Sweetman v Coillte Teoranta, Case 323/17] to consider the likely significant effects of projects or plans on European protected sites, individually or in-combination? In particular, have Appropriate Assessments been undertaken under the Habitats Directive? If not, has a screening exercise shown that there is no need for such assessments?**

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21. A Habitats Regulations Assessment (HRA) was initiated at the earliest stage of compiling the plan through the preparation of a baseline report ([SUB 037](#)). Each stage of the plan has been screened to see if any aspects might have a likely significant effect (LSE) on any European Site (including Ramsar sites) ([SUB 005](#), [SUB 029](#), [SUB 033](#) [SUB 036](#)). No aspects are deemed to have a LSE and so Stage 2 HRA (Appropriate Assessment (AA)) is not required. Therefore no additional HRA was required at this stage.
22. Clearly the relevant stage to undertake the AA would be at detailed planning application stage as appropriate. The policy framework in the plan provides for this. It is County Council's view that the plan would not facilitate the granting of planning permissions for minerals development / projects contrary to the Habitats Regulations / Directive.
23. The HRA accompanying the plan has also been reviewed in the light of the recent Sweetman case, but also other relevant judgements. A detailed additional HRA note has been submitted ([SUB 020](#)). A very precautionary approach was taken in the screening of the plan and only Allocation 01: - Land east of Stowe Hill Quarry could be construed to have any conceivable prospect of causing an adverse effect on a European Site. However, importantly it was recognised that policy protection afforded to Slade Brook SSSI would also provide incidental protection for the River Wye SAC. At the final stage of HRA screening it was concluded that allocating 'Land East of Stowe Hill Quarry' did not necessitate specific 'add on mitigation' measures to avoid a LSE on a European Site. A number of features have however been integrally built into the MLP from an early stage. These integral features have a general protective and positive effect for biodiversity and would be expected to be present in any recently prepared plan.

Questions 1 to 11 response word count: 2,407