

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**PLANNING and TRANSPORTATION ADVISORY BOARD**

**12 March 2013**

**Report of the Director of Planning, Transport and Leisure**

**Part 1- Public**

**Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)**

**1 KENT MINERALS AND WASTE LOCAL PLAN: MINERALS SAFEGUARDING**

**This report summarises the Mineral Safeguarding Topic Paper that has been prepared by Kent County Council (KCC) to inform the production of the new Kent Minerals and Waste Local Plan (KMWLP). It outlines the purpose of the paper, how it will fit in with the KMWLP, and the implications for the Borough. Members are invited to endorse the officer level comments summarised in this report and made by the deadline of 4<sup>th</sup> March.**

**1.1 Introduction**

1.1.1 Kent County Council is the Minerals and Waste Planning Authority and has responsibility for preparing the Kent Minerals and Waste Local Plan (KMWLP).

1.1.2 The KMWLP consists of a collection of minerals and waste documents including key plans and other supporting documents, as follows:

- Minerals and Waste Local Plan (formerly the 'Core Strategy')
- Mineral Sites Plan
- Waste Sites Plan

1.1.3 The MWLP is the strategic document which sets out the vision and plan for mineral provision and waste management in Kent. Core policies supporting this strategy and monitoring implementation frameworks will be an integral part of the Plan. It will also incorporate a limited suite of development management policies against which minerals and waste proposals can be assessed. It will look forward to 2030 and consider strategic site provision for minerals and waste management.

1.1.4 A report on the earlier consultation draft of the MWLP was considered by this Board on 27 July 2011. This earlier stage outlined strategic options with an indication of the preferred option for each policy.

1.1.5 This Topic Paper will inform the next stage of the plan-making process. KCC anticipate that a draft MWLP will be published and consulted on during June/July 2013 with a view to submitting the plan to the Secretary of State in October. An

examination of the soundness of the MWLP is programmed to take place in March 2014 and the project plan has set out that the plan should be adopted by September 2014.

## 1.2 Minerals Safeguarding Topic Paper – Purpose

- 1.2.1 This topic paper has been prepared to inform the minerals safeguarding designation in the draft MWLP. The paper builds on the responses to earlier Minerals and Waste Plan consultations, associated evidence base consultations and organised consultee workshop events. KCC is seeking views on their approach to mineral safeguarding in Kent and the extent of the proposed safeguarding areas for individual mineral types, in order to help shape the mineral safeguarding policies and mineral safeguarding maps for the Kent Minerals and Waste Local Plan.
- 1.2.2 Minerals are an important resource and an important ingredient in developing and sustaining the economy and facilitating growth. By their nature, minerals are where they are – they are not footloose in nature. The concern is that currently untapped mineral resources could be sterilised if other forms of development takes place upon or very close by to the reserves.
- 1.2.3 Minerals safeguarding is the planning term used to describe the process of ensuring that natural mineral resources are not sterilised by other types of development, thereby leaving insufficient supplies for future generations.
- 1.2.4 Minerals safeguarding is carried out through the identification of **Mineral Safeguarded Areas (MSAs)** and **Mineral Consultation Areas (MCAs)**. The identification of these areas alerts prospective developers of non-mineral development and the relevant local authority to the existence of important economic mineral resources.
- 1.2.5 There is **no presumption that any mineral resources within MSAs or MCAs will actually be suitable for extraction**. The MSA designation does not provide support for a grant of planning permission or a minerals plan site allocation. Equally, there is no presumption that non-mineral development within a MSA is automatically precluded.
- 1.2.6 The purpose of the safeguarding designations is to ensure that economic mineral resources are adequately and effectively considered in land-use planning decisions for non-mineral development.

## 1.3 Minerals Safeguarding – National Planning Policy Framework (NPPF)

- 1.3.1 The NPPF (para.143) requires local planning authorities (KCC in the case of minerals planning) to: *‘...define Minerals Safeguarding Areas and adopt appropriate policies in order that known locations of specific minerals resources of local and national importance are not needlessly sterilised by non-mineral development, whilst not creating a presumption that resources defined will be*

*worked; and define Minerals Consultation Areas based on these Minerals Safeguarding Areas...’.*

- 1.3.2 The NPPF, in the glossary of terms, defines a MSA as: ‘...An area designated by Minerals Planning Authorities which covers known deposits of minerals which are desired to be kept safeguarded from unnecessary sterilisation by non-mineral development...’.
- 1.3.3 Mineral Consultation Areas (MCAs) are not defined in the NPPF but instead their origins can be found in the Town and Country Planning Act 1990. MCAs provide the mechanism for district councils to consult with the county council on any planning applications it receives for non-mineral developments which fall within the boundary of a MCA and which would be likely to affect the winning and working of minerals. This arrangement should also be used by county councils for consulting district councils before granting planning permission for mineral working which could affect other or existing land uses. They can cover all, parts of, or marginally more than a MSA. The legislation does not oblige MCAs to be defined.

#### **1.4 Minerals Safeguarding – Approach**

- 1.4.1 The main identification source of un-sterilised mineral resources in Kent is the British Geological Survey (2006)<sup>1</sup>. This survey mapped the geological distribution of all onshore mineral resources. Other sources include planning permissions, borehole data and mineral resource reference books.
- 1.4.2 During various consultations and stakeholder workshops, the minerals which are, or may become, of economic value in the foreseeable future and require safeguarding have been determined. There are many factors that have been taken into account in assessing the economic potential for mineral deposits. These include the economic value of the mineral exceeding the cost of extraction and a minimum resource able to make the extraction a viable operation.
- 1.4.3 Urban areas have been removed from the geological data. The urban areas have been defined in the same manner to that outlined in the 2007 BGS<sup>2</sup> guidance which involves KCC using OS Mastermap.
- 1.4.4 Using the outputs from consultation events, KCC has decided that safeguarding of Kent’s economic minerals will focus on the following:
- Folkestone Beds Sand Deposit (soft sand and silica sand);
  - Ragstone (crushed rock);
  - Building stone;
  - River terrace sand and gravel deposits throughout Kent, storm beach sand and gravel deposits in the Dungeness and Lydd areas; and
  - Brickearth.

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<sup>1</sup> British Geological Survey (2006): South East England Regional Assembly: South East Plan – Review of Mineral Supply and Demand’ Economic Minerals Programme Commissioned Report CR/06/147

<sup>2</sup> British Geological Survey (2007): A Guide to Mineral Safeguarding in England

- 1.4.5 Chalk, Clay, Woolwich, Oldhaven and Thanet sand beds and any remaining Head gravel deposits around the Highstead area to the east of Canterbury will not be safeguarded due to a combination of either their ubiquity and relatively low value, or there having been little or no interest in their economic exploitation in the recent past. There is one exception namely the MSA and MCA, Medway Works, Holborough.
- 1.4.6 Mineral infrastructure, including wharves and railheads will be safeguarded according to the policy requirement in the NPPF.
- 1.4.7 The MWLP will also include a general policy – as opposed to a site-by-site policy – to safeguard aggregate recycling facilities. A similar approach will be followed for safeguarding permanent concrete plants in industrial estates.

**1.5 Exemptions from Safeguarding** – In the earlier draft of the Minerals and Waste Local Plan (when it was known as the Minerals and Waste Core Strategy) KCC proposed to exempt ‘householder applications, development already allocated in a statutory plan or infill development of a minor nature in existing built up areas’. It is proposed to retain these exemptions in the Minerals and Waste Plan policy on safeguarding. The BGS guide to mineral safeguarding (2011)<sup>3</sup> advises Mineral Planning Authorities to give due regard and consideration to whether any types of planning applications should be exempt from the consultation arrangements established alongside MCAs. Some examples of possible exemptions include:

- Infilling in towns and villages
- Householder applications
- Advertisement applications
- Reserved matters applications
- Applications for new or improved accesses
- ‘Minor’ extensions/alterations to existing uses/buildings
- ‘Temporary’ development (for up to five years)
- Agricultural buildings adjacent to existing farmsteads
- ‘Minor’ works such as fences and bus shelters
- Amendments to current permissions (with no additional land take involved).

## **1.6 Minerals Safeguarding – Implications for Tonbridge and Malling**

- 1.6.1 It must be stressed that the current consultation is for a topic paper and not a draft plan. The topic paper is important because it outlines the approach that will be taken to safeguarding minerals resources in the draft plan but it does not, in itself, contain specific policies. However, given the influence the content of the paper on the draft Minerals and Waste Local Plan, it would be unwise not to submit any comments.

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<sup>3</sup> British Geological Survey/The Coal Authority Mineral Safeguarding in England: Good Practice Advice (2011)

- 1.6.2 It needs to be reiterated that there is **no presumption that any mineral resources within Minerals Safeguarding Areas or Minerals Consultation Areas will be suitable for extraction** – an MSA is not a green light for the winning of minerals. The MSA designation does not provide any support for a grant of planning permission or a minerals plan site allocation. Other issues including need (capacity of existing resources) and environmental (irreparable damage/loss of designated sites, disturbance, and noise and air pollution to local residences, for example) need to be considered alongside the MSA at the time of assessing an application or considering a potential allocation. The Board will be aware of the proposed extension to the Hermitage Lane Quarry. This was called-in and a Public Inquiry was held at the end of 2012. It is anticipated that the Inspector's Report will be published in April 2013. Due to the fact that the Inquiry has already taken place, this topic paper will have no bearing on the decision of the Inspector. In any case, as highlighted above, should an MSA cover the area subject to the proposed extension of Hermitage Quarry – which is more than likely given the availability of minerals – this will not provide any support for the granting of any future planning permission.
- 1.6.3 It must also be stressed that there is **no presumption that non-mineral development within a MSA is automatically precluded** – MSAs alert those proposing sites for future development to the presence of valuable mineral resources which they might otherwise not have considered.
- 1.6.4 Given the geology of the Borough, it is of no surprise that the safeguarding of minerals resources is a significant issue for Tonbridge and Malling. There are large areas of building stone and crushed rock resources across the Malling area. In addition there are quite large areas of superficial sand and gravel along the Medway Valley in the vicinity of Snodland and Wouldham (please see Annex 1 for the map). It must be stressed that this map is purely illustrating the geology of Kent – it does not represent the proposed safeguarding areas, these will feature in the draft MWLP in the summer which will be available for public consultation.
- 1.6.5 The fundamental principles that have underpinned the approach of KCC to MSAs and MCAs are drawn from the NPPF, so this stands up as a robust approach consistent with National Planning policy.
- 1.6.6 However, some of the guidance that has influenced the approach is not current and does not reflect the new Coalition Government's growth agenda. The Communities and Local Government Planning and Minerals, Practice Guide (2006) is recommended for cancellation by Lord Taylor in his review of existing planning guidance. Lord Taylor concluded that the sector is in a position to provide useful guidance. At the very least, this topic paper should set the 2006 guide within this current context because it could be subject to change.

## 1.6.7 Summary of the Officer-Level Response

- 1.6.8 It makes sense to prevent the sterilisation of potentially economic viable minerals resources that are important to the delivery of sustainable economic growth. However, how this is approached is very important and should not result in a strategy that may be prejudicial to growth and other aspirations of local communities. In this respect it is considered that the exemptions from safeguarding that have featured in previous iterations of the MWLP are too narrowly drawn. They should reflect the comprehensive list of exemptions that feature in the BGS guide to mineral safeguarding unless a sound reason is given for excluding certain criteria. Furthermore, the districts should be fully involved in determining the extent of urban areas that should be excluded from safeguarding areas, being best placed to define the outer extents as local planning authorities.
- 1.6.9 Whilst the maps illustrate the potential geographical spread of the minerals resources, it is not obvious from the topic paper the volume of minerals that are economically available and the importance and quality of these resources regionally and nationally. These factors would provide a clearer understanding of the need to safeguard the resources and whether there are certain resources that should be safeguarded over others or whether some resources, due to their prevalence elsewhere, could be sterilised by development supporting local sustainable growth.
- 1.6.10 Furthermore, the topic paper does not set into context the role of winning minerals in the minerals strategy for Kent - where in the hierarchy does it feature? Reducing the need for winning additional minerals should be a priority through policies requiring the reuse and recycling of building materials, especially involving redevelopment projects. This is a more sustainable approach given the potential environmental harm caused by opening new quarries to habitats, biodiversity and disturbances to local communities through noise of operations and traffic movements.
- 1.6.11 Finally, how MSAs are represented on the Proposals Maps needs to be given careful consideration. The MWLP will form part of Tonbridge and Malling Borough Council's Development Plan, once adopted. The policies and proposals in the suite of minerals and waste plans will therefore have to be illustrated on the Proposals Map for the Borough Council's Development Plan. Due to the large geographical spread of MSAs and the fact that there is no presumption that non-mineral development within a MSA is automatically precluded, it is reasonable to suggest that MSAs are shown discretely on the Proposals Map. This is so that they do not overwhelm the local development strategy, which is the principle function of the Proposals Map from the perspective of the local planning authority (Tonbridge and Malling).

## **1.7 Financial and Value for Money Considerations**

1.7.1 No considerations arising from this report because it is made in respect of a topic paper.

## **1.8 Risk Assessment**

1.8.1 There is a risk that if the Borough Council does not make a representation on this Topic Paper, an approach may be followed by Kent County Council in the Minerals and Waste Local Plan on safeguarding that does not take into account our planning concerns and issues.

## **1.9 Equality Impact Assessment**

1.9.1 See 'Screening for equality impacts' table at end of report

## **1.10 Recommendations**

1.10.1 That the contents of this report including the officer level comments summarised in paragraphs 1.6.8 to 1.6.11 and submitted by the 4<sup>th</sup> March are noted and that Cabinet be recommended to endorse those comments subject to any additional comments Members may wish to make.

The Director of Planning, Transport and Leisure confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

Minerals Topic Report 4: Minerals Safeguarding Kent County Council (February 2013)

British Geological Survey (2006): South East England Regional Assembly: South East Plan – Review of Mineral Supply and Demand' Economic Minerals Programme Commissioned Report CR/06/147

British Geological Survey (2007): A Guide to Mineral Safeguarding in England

British Geological Survey/The Coal Authority Mineral Safeguarding in England: Good Practice Advice (2011)

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<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*