

**Kent Minerals and Waste Local Plan  
Safeguarding Supplementary Planning Document (Draft, Sept' 2016)**

**Tonbridge & Malling Borough Council - Officer-level Comments**

**1. Introduction**

- 1.1. Thank you for the opportunity to comment on the draft Safeguarding Supplementary Planning Document (SPD).
- 1.2. Set out below are the officer-level comments from Tonbridge and Malling Borough Council. The order of the comments reflects the order of the document.
- 1.3. These comments will need to be subject to ratification by Members in March 2017.

**2. Officer-level Comments**

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Para. No.	Officer-level comments
4.11	<p><u>Proposed Minimum threshold for MSA</u></p> <p>While acknowledging the MPA's concern that even a small development may have an impact on a MSA, it is strongly recommended that a minimum threshold of 10 residential units should be applied to the implementation of Policy DM 7. The exercise of demonstrating compliance with DM 7 will involve several specialists (plant operators, geologists, planning and/or economic consultants) that are unlikely to be insignificant in terms of cost and time.</p>

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	<p>The Government's National Planning Policy Framework (NPPF) makes it very clear that planning policies should be mindful of the issue of viability:</p> <p><i>'...the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened...'</i> (para.173, NPPF).</p> <p>With this in mind it is suggested that a minimum threshold of 10 residential units represents a reasonable amount of development above which the requirements of DM 7 can be applied. This is a threshold that is supported by the Government for the application of other planning requirements such as contributions for affordable housing and the integration of sustainable drainage systems.</p> <p>It is questionable whether requiring all of this action is reasonable and proportionate for a scheme of fewer than 10 residential units.</p>
4.25-4.26	<p><u>Clarification of DM 7 (5) Material Considerations</u></p> <p>Disagree with the interpretation of 'or' in Policy DM 7. This policy states 'either' at the end of the opening statement with 'or' inserted after each clause. 'Either' and 'or' together in the same policy mean choices can be made between alternatives, i.e. only one clause needs to be satisfied for compliance with the policy.</p> <p>If the intention was for all of the clauses (1-7) in Policy DM 7 to be satisfied, or even considered, the word 'either' would not feature and 'and' would be stated at the end of each clause (not 'or').</p> <p>However, the Minerals and Waste Local Plan has been adopted and it is not for the SPD to attempt to reinterpret what is clearly stated in the Development Plan, as suggested in para. 4.25 where it states:</p> <p><i>'...In order for the planning application to proceed without an objection from the County Council, the conclusions of the Mineral Assessment would have to satisfactorily demonstrate that Policy DM 7 clauses 1 – 3 or 5 apply to the proposed development...'</i></p> <p>Policy DM 7 does not permit a selective position to be taken in the SPD. This is quite arbitrary and also unjustified by the Minerals and Waste Local Plan. Furthermore, Policy DM 7 in the Local Plan does not provide scope for a sequential approach to meeting the clauses in the Policy, as stated in para.4.26:</p> <p><i>'...The 'or' after each of the clauses in Policy DM 7 means that they each need to be considered. However, sequentially it will</i></p>

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	<p><i>make sense for consideration of the economic value (clause 1) and viability and practicability of extraction being considered first before considering practicability of prior extraction (clause 2) and whether the need for the development outweighs the safeguarding of the mineral (clause 5)...’.</i></p> <p>If the County Council will not object to a non-mineral planning application if the Mineral Assessment demonstrates that only clause 5 of Policy DM 7 applies, then more details are required on what ‘material considerations’ are relevant. This clause states:</p> <p><i>‘...material considerations indicate that the need for the development overrides the presumption for safeguarding such that the sterilization of the mineral can be permitted following the exploration of opportunities for prior extraction...’.</i></p> <p>To aid this process and provide clarity for the Kent districts and developers, some examples of what material considerations would be considered acceptable need to be provided, eg need for housing to contribute to housing land supply position/meeting Objectively Assessed Need (OAN).</p> <p>Clarification of DM 7 (6) Exemptions</p> <p>It would be helpful if <i>‘infill development of a minor nature in existing built up areas’</i> is defined in the SPD to ensure there is a consistent interpretation.</p>
4.43	<p><u>Procedure Notes and Flowchart recommended</u></p> <p>It is understood that to enable the effective implementation of the requirements of Policy DM 7, the requirement for a Mineral Assessment needs to be integrated into the local list of validation information requirements for planning applications within Mineral Safeguarding Areas (MSAs) and Mineral Consultation Areas (MCAs) and within 250m of safeguarded minerals and waste facilities. There is a requirement to review the local list every two years, as set out in the PPG, and amendments are normally incorporated at this time. The review process requires public consultation before any changes are adopted by the LPA,</p> <p>To help this process, it is considered that the SPD should include a consolidated pro-forma that takes the applicant and local planning authorities step-by-step through the procedure for compliance with the requirements of Policy DM 7. Furthermore, the SPD would benefit from a decision-making flow chart so that users can understand the logical line of thinking and what applies in certain local circumstances.</p>

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	<p>Essentially this process needs to be as standardised and transparent as possible so that developers do not encounter variations of requirements from one Kent district to the next, which would be unhelpful. Please also see the comments made in respect of 'material considerations' above.</p>
5.12-5.16	<p><u>More 'Proportionate' approach for Local Plan Allocations</u></p> <p>Concern is expressed about the requirements for draft Local Plan allocations prepared by the Kent districts. Para. 5.13 states that '<i>...the relevant factors for consideration are the same as those for a planning application...</i>'. It is not clear if this means that the full process that planning applicants need to follow equally applies to Local Plan allocations. The reason why this is a concern is because several Kent districts are covered by extensive MSAs and MCAs. It is, therefore, considered that a proportionate requirement for this particular process needs to be adopted, which is more strategic and less detailed than the process for individual planning applications. This needs to be clearly set out in the SPD. It is important to be mindful of the Government's objective of having full coverage of up-to-date Local Plans across the country as soon as possible, which means that the process of plan-making should not be unduly delayed. Using a proportionate evidence base is clearly stated in the NPPF and as a local planning authority we need to demonstrate compliance with this during our Local Plan-making.</p> <p>Para. 5.16 states:</p> <p><i>'...Where site allocations are proposed in these areas the local planning authority will need to demonstrate the need for the development at the location and consult the County Council to consider what measures may be taken to mitigate the effect of the development on the safeguarded resources or assets, in order to ensure conformity with the Kent MWLP policies.'</i></p> <p>It is not clear what information is needed to demonstrate why the development is being pursued at the locations in the local plans, which could result in various interpretations by the Kent districts. A standardised, transparent process needs to be put in place. This may include, for example, a set of questions that need to be answered by the local planning authorities, eg Does this location of development achieve key objectives and principles underpinning the Local Plan?</p> <p>In responding to consultations from the Kent districts on emerging local plans, there needs to be an appreciation of the Government's objective of boosting significantly the supply of housing (NPPF, para.47).</p>