

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

11 March 2014

Report of the Director of Planning, Housing and Environmental Health

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 – RESPONSE TO CONSULTATION

Summary

Kent County Council (KCC) is consulting on the pre-submission version of the Kent Minerals and Waste Local Plan (MWLP). This report recommends a response to KCC on the consultation document.

1.1 Background to the Consultation

- 1.1.1 Kent County Council is the Minerals and Waste Planning Authority and has a responsibility to prepare a suite of plans setting out policies and sites for mineral extraction, importation and recycling as well as waste management. The Kent Minerals and Waste Local Plan (MWLP) sets out the overarching strategy. In addition there are the Site Plans (the Mineral Sites Plan and the Waste Sites Plan) which will allocate specific locations and sites for minerals and waste developments. These Sites Plans are not being consulted upon at the moment. The pre-submission consultation will take place after the Inspector's Report into the soundness of the MWLP has been received (estimated: April 2015). All of the Plans cover the period 2013-2030.
- 1.1.2 The pre-submission consultation for the MWLP is the third and final consultation stage. The first consultation at the 'Issues' stage ran between 24 September and 19 November 2010. The Council submitted a response to KCC during this first stage. The second consultation was the 'Strategy and Policy Directions' stage which ran between 21 May and 9 August 2011. The Council made formal representations on this last document. These comments were reported to this Board on 17 November 2010.
- 1.1.3 The version of the MWLP that is currently available for consultation is the one that KCC intends to submit for examination later this year. When adopted, the policies within the MWLP will replace the existing suite of saved Kent minerals and waste policies.

- 1.1.4 The new Plans will be used as the policy framework for the determination of applications for minerals and waste developments in Kent until the end of 2030. The MWLP is the overarching strategic document and the two Sites Plans will have to be in conformity with it. It sets out KCC's long-term spatial vision for the county in relation to minerals and waste. It also outlines the strategic objectives for the county. It sets out a delivery strategy which identifies how the objectives will be achieved in the plan period. It identifies two areas where key (strategic) mineral and waste development is likely to take place. It also provides the development management policy framework against which minerals and waste applications will be considered.
- 1.1.5 The MWLP (once adopted) will form part of the Council's Development Plan which means that the policies contained within it will need to be used alongside the planning policies in the Council's adopted Development Plan Documents to assess local planning applications. For this reason alone it is important that the Council responds to this current consultation because there will be direct implications for future decision-making locally once the MWLP is adopted.

1.2 Consultation Matters

Local Development Scheme

- 1.2.1 The Local Development Scheme (LDS) is the project plan for the MWLP; it sets out the timetable for the production of the documents including the examination and adoption dates. The latest published version of the LDS (December 2012). It indicates that the MWLP should have been submitted in October 2013 and examined in March 2014. Furthermore, it indicates that the pre-submission version of the Sites Plans will be consulted on in September 2014, yet the website states that this is not likely to take place until April 2015 after the Inspector's Report for the MWLP has been received.
- 1.2.2 **Proposed Response** – The Local Development Scheme is not up-to-date and does not correspond with the timetables displayed on the website. The LDS indicates that the MWLP was submitted in October 2013 and that the pre-submission version of the Sites Plans will be published for consultation in September 2014. This is inconsistent with the information on the website and should be corrected so that stakeholders have a clear idea of the key milestones for the production of the MWLP, the Mineral Sites Plan and Waste Sites Plan.

Supplies of Land-won Minerals: Silica Sand – for information

- 1.2.3 Silica sand is considered to be a mineral of national importance, due to its limited distribution. The Folkestone Beds, west of Maidstone is the traditional extraction area for silica sand in Kent. National policy requires Mineral Planning Authorities to plan for a steady and adequate supply of silica sand by providing a stock of permitted reserves. There are three existing silica sand quarries in Kent. Whilst two of the three quarries have sufficient reserves to last for the entire plan period,

one site (Wrotham Quarry (Addington Sand Pit)) does not. In response to this situation, the MWLP states that a site allocation will, therefore, be required in the Mineral Sites Plan to identify sufficient reserves to meet national requirements for silica sand. Whilst the Sites Plan will not be published for consultation until April 2015 at the earliest, this matter is being drawn to the attention of the Board because not only does the Pit fall within Tonbridge and Malling but the site and its future extension area lie in the Kent Downs Areas of Outstanding Natural Beauty (AONB). The AONB is a nationally important designation and so developments within it or its setting have to have regard to the particularly sensitive nature of the environment. The exact extent of the allocation will not be known until the Sites Plan is published next year.

Strategic Site for Minerals – Medway Cement Works, Holborough

- 1.2.4 The site of the proposed Medway Cement Works, Holborough and its permitted mineral reserves are together identified as the Strategic Site for Minerals in Kent (Policy CSM3). The policy states: ‘...*Mineral working and processing at the Strategic Site for Cement Minerals will be permitted subject to meeting the requirements of relevant development management policies...*’. The supporting text to the policy states: ‘...*there are likely to be significant changes agreed to the approved layout and design, which would require a fresh planning application being approved prior to the development of the site...*’. The most relevant development management policy is Policy DM10: Health and Amenity. This states:

Minerals and waste development will be permitted if it can be demonstrated that they are unlikely to generate significant adverse impacts from noise, dust, vibration, odour, emissions, bioaerosols, illumination, visual intrusion, traffic or exposure to health risks and associated damage to the qualities of life and wellbeing to communities and the environment

- 1.2.5 **Proposed Response** – There are no objections, in principle, to Medway Cement Works, Holborough being identified as a strategic site for minerals in the MWLP because it enjoys the benefit of an extant planning permission. However, to assure the local community that their health and amenity will not be harmed as a result of a revised scheme, either Policy CSM3 or DM10 should be amended. It should be clearly stated that the local impacts of the revised proposal on the environment and local community must be equal to or less than those of the permitted scheme. This would include matters such as the impact on the landscape in terms of the scale and massing of the development and the impact on the highways network, as well as impacts from noise, dust, vibration, odour emissions etc. As an alternative to additional wording to this effect at the end of CSM3, the following wording could feature at the end of Policy DM10:

In the case of a revised proposal to an existing permitted scheme, the changes should generate impacts that are less than or, at worse, equal to

those from the existing permission.

Land-Won Mineral Safeguarding

- 1.2.6 At the meeting of the Board on the 12 March 2013, a topic paper on Mineral Safeguarding Areas (MSAs) and Mineral Consultation Areas (MCAs) prepared by KCC was reported. This topic paper was prepared to help improve the understanding of these policies.
- 1.2.7 The purpose of MSAs is to ensure that mineral resources are adequately and effectively considered in land-use planning decisions, so that they are not needlessly sterilised, compromising the ability of future generations to meet their own needs. The designated MSAs are illustrated on the Key Proposal Map at the back on the MWLP which is based upon the British Geological Society data. Ubiquitous minerals, namely chalk and clay, are not being safeguarded. The minerals that are safeguarded are: brickearth, sharp sand and gravel, soft sand (including silica sand), ragstone and building stone. Defining MSAs carries no presumption for extraction and there is no presumption that any areas within MSAs will ultimately be acceptable for mineral extraction (specific sites are designated for that purpose). Equally there is no presumption that non-mineral development within a MSA is automatically precluded.
- 1.2.8 MCA designation is a mechanism that aims to ensure that consultation takes place between KCC and district planning authorities when mineral interests could be compromised by non-mineral development, especially in close proximity to a known mineral resource. An MCA has been established around the safeguarded mineral reserves at Holborough **[Annex 1]**.
- 1.2.9 There are two policies in the MWLP relating to mineral safeguarding: CSM5 and DM7. Policy CSM5 is the strategic policy that states that minerals resources will be safeguarded. It also states that a MSA and a MCA have been identified for Medway Works, Holborough. Policy DM7 **[Annex 2]** is the development management policy that sets out in more detail how to treat non-mineral developments which are incompatible with safeguarding the mineral within a Mineral Safeguarding Area. The aim of the policy is to facilitate prior extraction of the mineral wherever possible before non-mineral development occurs.
- 1.2.10 **Proposed Response** - It makes sense to prevent the sterilisation of potentially economic viable minerals resources that are important to the delivery of sustainable economic growth. However, the MWLP does not adequately set this policy within the wider national planning policy context. The National Planning Policy Framework (NPPF) clearly has a growth agenda at its heart. Para.14 requires local planning authorities through the making of Local Plans to positively seek opportunities to meet the development needs of their area. Furthermore it states that Local Plans should meet objectively assessed needs. In addition para.173 in the NPPF states: '*...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...'. In light of this National Policy - which should underpin all local planning policies - the MSA policies (CSM5 and DM7) and the supporting text need to state:

Safeguarding should not put at risk the deliverability of sustainable growth identified in Local Plans in response to local evidence of need.

Local planning authorities are required to respond to local evidence of need for housing and cannot afford to have their strategies to respond to this need sterilised by restrictive safeguarding policy. It should be noted that Mineral Safeguarding Areas are not listed as one of the specific policies in the NPPF which indicate that development should be restricted (please see footnote 9 to para.14 in the NPPF).

- 1.2.11 Policy DM7 needs to be reworded to accurately reflect the responsibilities and powers of Kent County Council as the Minerals and Waste Planning Authority for Kent. The policy opening sentence states: '*...Planning permission will only be granted for non-mineral developments which are incompatible with safeguarding...*'. KCC is not the local planning authority for non-mineral and non-waste development; this is the responsibility of the Kent districts. The policy should accurately reflect this and be reworded to:

'...Kent County Council, as Minerals and Waste Planning Authority, will not be supportive of non-mineral developments which are incompatible with safeguarding the mineral...'

- 1.2.12 The aim of the safeguarding policy needs to reflect the risks that it poses to the viability and therefore deliverability of non-mineral development overlying the safeguarded minerals. Policy DM7 states that one of the conditions for allowing non-mineral development is if the mineral can be extracted satisfactorily prior to the incompatible development taking place. This is an over-simplification. The condition should recognise that the mineral should be extracted where it can be done so in a timely way that does not put at risk the deliverability of the non-mineral development overlying it. The policy should better reflect the policy in the NPPF (para.143, bullet point 5, p.33) which states that prior extraction should be encouraged, where practicable and environmentally feasible. The first bullet point in Policy DM7 should be reworded to:

'...it is practicable, environmentally feasible and economically viable for the mineral to be extracted in a timely way that does not put at risk the deliverability of the incompatible development taking place...'

Oil, Gas and Coal Bed Methane

- 1.2.13 Policy CSM8 **[Annex 3]** covers proposals for hydraulic fracking for shale gas. This process involves water (plus additives) being pumped under pressure into productive shale rocks via a drilled bore to open up pore spaces and allow the shale gas to be pumped to the surface for collection. Given the relative infancy of this form of mineral extraction, particularly in the UK, a precautionary approach should be adopted to dealing with such proposals. This approach could include seeking evidence of the proposed process being proven to work safely (within the UK) with no unacceptable harmful adverse impacts on water courses, biodiversity, properties and the local environment and communities.
- 1.2.14 **Proposed Response** – Given the nature of shale gas extraction by hydraulic fracking, Policy CSM8 should take a precautionary approach. Insert a bullet point after the first paragraph that reads:

evidence being supplied demonstrating that the extraction process has been tested and proven, within the UK, to be safe with no harmful adverse impacts on water courses (groundwater, water bodies and wetland habitats) biodiversity, properties and the local environment and communities.

The detailed wording of the Policy should also be amended to be consistent with the National Planning Policy Framework and I will ensure KCC are advised accordingly on all such policy wording.

Waste Reduction

- 1.2.15 The MWLP includes a policy on waste reduction, CSW3 **[Annex 4]**. This is focussed on reducing waste during all forms of new development and integrating space within new developments to allow for the storage of segregated waste to facilitate recycling. Whilst the essence of this Policy is welcomed, it is questionable whether it should feature in a strategic policy document such as the MWLP because it relates to detailed development matters. These are more appropriately dealt with by the districts in Kent.
- 1.2.16 **Proposed Response** – Delete Policy CSW3 (Waste Reduction) from the MWLP. The Policy contains detailed matters relating to non-waste development which is not appropriate for a strategic policy document such as the MWLP. These matters are best dealt with through the Local Plans prepared by the districts in Kent who have the responsibility for assessing and determining applications for non-waste development proposals.

Location of Non-Strategic Waste Sites

- 1.2.17 This policy sets out locational criteria for determining applications for non-strategic waste sites. As with previous policies addressing impacts of permitted operations, the terminology in the Policy is not consistent with the requirement of the policy in the NPPF. The policy should recognise that any proposal for a non-strategic waste site as part of a new major development for employment or on land within industrial estates would also need to demonstrate conformity with the adopted Local Plan prepared by the district authority.
- 1.2.18 **Proposed Response** – Amend the opening paragraph of Policy CSW6 so that it is consistent with the National Planning Policy Framework (para.143). It should read: ‘...*providing that there is no unacceptable adverse impact on sensitive receptors...*’.
- 1.2.19 The policy does not reflect the need for proposals for non-strategic waste sites to demonstrate conformity with relevant policies in other documents that make up the Development Plan for the local area, i.e. the Local Plan, for permission to be granted. Amend the text in the opening sentence of the policy to read:

‘...Permission will be granted at sites for non strategic waste facilities in the following locations, providing that there is no significant adverse impact on sensitive receptors and the proposal is consistent with the policies in the adopted Local Plan prepared by the district planning authority...’

Identifying Sites for Municipal Solid Waste – Tonbridge & Malling

- 1.2.20 This section of the MWLP identifies that in the short to medium term, the Allington Waste Management Facility will need to be expanded to include a new Household Waste Recycling Centre to serve Tonbridge and Malling. The MWLP does not identify the site for development because this is a matter for the Waste Sites Plan consultation. Instead, the MWLP includes a high-level policy framing this proposal. Policy CSW7 states: ‘...*A site will be identified in the Waste Sites Plan for a Household Waste Recycling Centre to serve the Borough of Tonbridge and Malling...*’.
- 1.2.21 **Proposed Response** – The Borough Council is supportive of this approach and Policy CSW 7. The identification of the site for a Household Waste Recycling Centre to serve Tonbridge and Malling must be informed and be consistent with the policies in the NPPF and the Local Plan prepared by the Borough Council. In particular, the environmental criteria should ensure that the permitted operations do not have unacceptable adverse impacts on the natural and historic environment or human health, including from noise, dust, visual intrusion, traffic and take into account the cumulative effects of multiple impacts from individual sites in the locality.

Energy from Waste (EfW) Facilities

- 1.2.22 One of the fundamental aims of the MWLP is to reduce the amount of waste being sent to landfill. The Plan identifies that there will need to be a substantial increase in the number of EfW plants during the plan period if a rapid shift away from landfill is to occur. The identification of sites is not a matter for the MWLP. Sites for additional EfW facilities will be identified in the consultation document for the Waste Sites Plan (not yet undertaken).

Safeguarding Permitted Waste Sites

- 1.2.23 The purpose of this Policy (CSW17) is to protect the current stock of waste management facilities. The policy seeks to safeguard permitted waste sites by refusing planning permission for the redevelopment of these sites to non-waste management uses unless alternative waste management capacity is provided elsewhere. Neither the policy nor the supporting text recognises that KCC does not have powers to determine non-waste development proposals.
- 1.2.24 **Proposed Response** – Decision-making on non-waste development proposals rests with the local planning authorities, i.e. the Kent districts, not KCC and such proposals will be assessed against the policies in the Local Plan which, along with the Minerals and Waste Local Plan, the Mineral Sites Plan and the Waste Sites Plan forms part of the Development Plan. Amend the Policy to reflect this distribution of authority:

Planning permission will not be supported by Kent County Council for development of sites which have permanent planning permission for waste management or which are identified in the Waste Sites Plan unless this does not reduce the existing waste management capacity of the site or an equivalent annual capacity can be provided at an alternative site within Kent.

1.3 Legal Implications

- 1.3.1 The Minerals and Waste Local Plan, once adopted, will form part of the statutory Development Plan for Tonbridge and Malling Borough. Decisions on planning applications in the borough have to be made in accordance with the Development Plan unless material considerations indicate otherwise. The Mineral Safeguarding Areas and the Mineral Consultation Areas will need to be illustrated on the Proposals Map for the Development Plan.

1.4 Financial and Value for Money Considerations

- 1.4.1 At this stage in the consultation process on the MWLP there are no financial or value for money considerations.

1.5 Risk Assessment

- 1.5.1 As highlighted above, the Minerals and Waste Local Plan, once adopted, will form part of the statutory Development Plan for Tonbridge and Malling Borough. If a representation is not made at this stage, there is the risk that the concerns and priorities of this Council and the potential impact on local communities will not be fully addressed.

1.6 Equality Impact Assessment

- 1.6.1 See 'Screening for equality impacts' table at end of report.

1.7 Recommendations

- 1.7.1 The proposed responses in this report be transmitted to KCC as the Council's formal response to the consultation on the Kent Minerals and Waste Local Plan (Pre-Submission, January 2014).

Background papers:

Kent Minerals and Waste Local Plan 2013-30
Pre-submission Consultation (January 2014)

contact: Nigel De Wit
Lindsay Pearson

Steve Humphrey
Director of Planning, Housing and Environmental Health

| Screening for equality impacts: | | |
|---|--------|------------------------|
| Question | Answer | Explanation of impacts |
| 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.