

To: **Matthew Balfour – Cabinet Member for Environment and Transport**

From: **Barbara Cooper, Corporate Director for Growth, Environment and Transport**

Subject: **Minerals and Waste Safeguarding Supplementary Planning Document (SPD) – Outcome of Public Consultation and Adoption**

Decision Number: 17/00028

Classification: **Unrestricted**

**Past Pathway of Paper: N/A**

**Future Pathway of Paper: Cabinet Member Decision**

**Electoral Division:** Kent wide

**Summary:**

This report sets out the results from the public consultation on the Minerals and Waste Safeguarding Supplementary Planning Document (SPD). It provides an overview of the responses received during the consultation, and it sets out the proposed revisions to take account of the comments received and to ensure that it best meets the needs of proposed users of the document.

**Recommendation:**

The Cabinet Member is asked to adopt the Kent Minerals and Waste Safeguarding Supplementary Planning Document March 2017 (SPD).

**1. Introduction**

1.1 National planning policy requires local plans, including those prepared by the Borough and District Councils, to safeguard mineral resources, minerals production and transportation infrastructure, and waste management facilities. This safeguarding plays an important role in delivering sustainable development, and it supports economic growth and our quality of life. It ensures that there is sufficient waste capacity to manage Kent's waste arisings such that the drive to net self-sufficiency is not compromised. It ensures that mineral and waste management resources are considered when determining planning applications and allocating sites for development within local plans.

1.2 In planning, safeguarding is the term used to describe the process of ensuring that:

- Natural mineral resources are not unnecessarily sterilised by other types of development, remaining available for use by future generations; and
- The capacity and operation of minerals and waste management and transportation infrastructure is not lost to, or compromised by, other

types of development except in the special circumstances set out in the Kent Minerals and Waste Local Plan 2013-30 (MWLP).

1.3 The Kent MWLP was adopted by Full Council in July 2016. As an adopted development plan, the MWLP Plan is also a material planning consideration for the Borough and District Councils in its planning application and plan making functions.

1.4 Within the Plan, there are a number of policies concerning minerals and waste safeguarding to ensure that development does not sterilise natural mineral resources, or compromise the capacity and operation of minerals and waste management and transportation infrastructure. These policies are set out below:

- Policy CSM5: Land-won Mineral Safeguarding
- Policy CSM6 – Safeguarded Wharves and Rail Depots
- Policy CSM7 Safeguarding Other Mineral Plant Infrastructure
- Policy CSW16 Safeguarding of Existing Waste Management Facilities
- Policy DM7 Safeguarding Mineral Resources
- Policy DM8 Safeguarding Minerals Management, Transportation Production & Waste Management Facilities
- Policy DM9 The Extraction of Minerals in advance of Surface Development

1.5 Whilst minerals and waste planning falls within the remit of the County Council, safeguarding is the responsibility of all planning authorities within Kent. When considering a planning application or proposing a local plan allocation, borough and district authorities must have due regard to whether it will compromise natural mineral resources or any other existing or planned minerals or waste development. Applicants also need to be aware of safeguarding when compiling a planning application or promoting sites for potential allocation in a borough/district local plan.

## **2. The Minerals and Waste Safeguarding Supplementary Planning Document**

2.1 In order to facilitate this responsibility for safeguarding, the Local Plan Examination for the Kent MWLP (during 2015) recognised the need for the County Council to produce a safeguarding supplementary planning document (SPD) following the adoption of the Kent MWLP. The Planning Inspector supported this approach in his report on the MWLP Plan (April 2016). The purpose of the SPD is to set out in detail the process that should be followed by the County Council, the Borough and District Councils and applicants when dealing with applications and local plan allocations that have implications for minerals and waste safeguarding.

2.2 Importantly, the SPD does not create new policy; it simply provides guidance on the implementation of the relevant adopted safeguarding policies that have already been adopted within the MWLP in 2016.

2.3 In preparing the draft SPD for Kent, the views of those who had made representations at the Independent Examination Hearing and those who

attended the Safeguarding Workshop in February 2016, as well as the views of the Informal Members Group, were considered.

- 2.4 At the Environment and Transport Cabinet Committee (ETCC) on 17 November 2016, a draft SPD was considered and endorsed for public consultation.

### **3. Public Consultation Responses**

- 3.1 The public consultation ran from 5 December 2016 to 30 January 2017. The document was available via the Council's Consultation Portal, the Minerals and Waste Local Plan (MWLP) webpage and direct consultation to some 2,500 parties on the MWLP database. This included Borough and District councils across Kent, mineral and waste operators, parish councils, statutory consultees, Members, planning consultants and those individuals who have previously expressed an interest in mineral and waste matters.
- 3.2 A total of 25 representations were received. Whilst the number of responses was low in comparison to the number of parties consulted, the responses came from a cross representation of interest groups. It included Borough and District Councils, mineral and waste operators/interests, planning consultants and the Port of London. In summary, the following points were made by respondents:

- Clarification was sought on the role of the Borough/District Councils and the County Council in safeguarding matters, the tests to be applied and concern that the Borough and District Councils lack the necessary expertise to fulfil the safeguarding role;
- A request for flow charts demonstrating when a Mineral Assessment is required, when to consult the County Council and the decision-making process;
- Mineral safeguarding should be proportionate to the demonstrable economic value of the safeguarded mineral;
- Flexibility is required to take account of need for economic and housing growth;
- Evidential basis was sought for the 250m buffer zone;
- The County Council should give clear reasons for objecting to development on safeguarding grounds;
- There is a need for the SPD to address safeguarding for temporary facilities;

#### *Mineral Assessments (MA)*

- A threshold of 10 units should be used for triggering a MA due to costs;
- It should be recognised that a mineral may not be economically viable if a cheaper alternative can be imported. This should reduce the need for a detailed Mineral Assessment (MA);

#### *Policy DM7 (Safeguarding Mineral Resources)*

- The evidence required to satisfy policy DM7 should be proportionate;
- Further clarification how the clauses in DM7 is sought;

- The suggested sequential approach to implementing policy DM7, as explained in the SPD, is not supported by the Plan's explanatory text;

#### Policy DM8 (Safeguarding Minerals Management, Transportation Production and Waste Management Facilities)

- Further clarification is required as to how the policy clauses will operate;
- The SPD needs to make clear that the MA will need to demonstrate that the facility safeguarded is not viable or capable of being made viable;
- In considering exempt developments, clarity should be given to detailing potential impacts on existing infrastructure;
- Odour should be included in the list of impacts that could take place at safeguarded facilities; and it should be made clear that the operator and developer should work together to ensure effective monitoring;

#### *Mineral Safeguarding Areas (MSA)*

- Clarification on the extent of MSAs and the types of application requiring safeguarding;
- There was support for an annual review of the MSAs coverage;

#### *Plan Making*

- It is too costly to request Mineral Assessments (MA) on potential site allocations. The SPD should set out what information is required to satisfy exemptions in policy without the need for a MA;
- More detail was sought on the role of the County Council for the safeguarding process when allocating non-mineral/waste development in local plans by the district and borough councils across Kent;
- Greater clarity needed for a process that is less detailed than the one for a planning application;
- Regard to safeguarding forming part of the 'duty to cooperate' requirements;
- There is greater detail needed on level of MA required for plan making, including a call for sites proforma to disclose this information;
- The Mineral Planning Authority's (this being the County Council in Kent but not including Medway Council), decision on safeguarding should be final and be consistent through the plan making process;

#### *Consultations*

- Consultations and pre-application engagement should involve site operators and the Port of London as appropriate;
- Borough and District Councils require up to date GIS layers for effective consultation;
- Where information is inadequate County Council should respond to Borough and District Councils promptly and in less than the statutory 21 days;

## *Other*

- The Wharf at Ramsgate should not be safeguarded in the MWLP as the Habitat Regulations were not considered;
  - There was a view from one respondent that public engagement during preparation of KMWLP was deficient;
- 3.3 The full overview of consultant responses is set out in Appendix A including the County Council's suggested response and where appropriate recommendations for changes to the draft SPD (the November 2016 version).
- 3.4 The proposed changes are not significant, but have improved the clarity and presentation of the document to help meet the needs of the Borough and District Councils, along with those submitting planning applications or promoting local plan allocations. It identifies the policies within the Kent MWLP that relate to safeguarding, and provides guidance to local authorities and/or or developers on how to proceed with planning applications and local plan preparation which have safeguarding implications.
- 3.5 The revised SPD sets out:
- the importance of minerals and waste management resources;
  - what is safeguarded and the availability of detailed map coverage of MSAs;
  - the approach to safeguarding in Kent with flow diagram explanation, including the information required when non-mineral and waste development is promoted in safeguarded areas;
  - the roles of the applicant, Borough/District councils and the County Council,
  - the consultation process as well as encouraging pre-application discussions between applicant, the Mineral Planning Authority (MPA), and as appropriate the Port of London Authority and operators; and
  - A fuller explanation of what Mineral Assessments, should contain to be appropriate;
- 3.6 It also includes details of monitoring and review arrangements. The safeguarding policies and a summary of the provisions are included as an appendix to the SPD. In addition, details of recent case law where safeguarding matters were pivotal to the determination of planning decisions have been added (see page 20 para. 4.43 of the SPD) which help to provide useful context for safeguarding matters. A copy of the revised SPD with proposed changes highlighted is attached as Appendix B.

## **4. Corporate Policy Implications**

- 4.1 The amended SPD supports the objectives and principles within the Kent MWLP and supports Kent County Council's Strategic Outcomes in helping to ensure that Kent's physical and natural environment is protected, enhanced and enjoyed by both residents and visitors.

4.2 A steady and adequate supply of minerals will also ensure that well planned housing growth can be supported, so Kent residents can live in the home of their choice.

4.3 In addition, sustainable minerals and waste development is essential to giving Kent residents a good quality of life, and enabling economic growth. The efficient maintenance and improvement of the County's infrastructure is also closely associated with safeguarding mineral supply.

## **5. Financial implications**

5.1 The preparation of this SPD is a requirement from the Government appointed Inspector who examined the Kent MWLP. The costs of preparing the Kent MWLP Mineral and Waste Sites Plans are included in the Environment Planning and Enforcement Division's budget.

## **6. Legal Implications**

6.1 The County Council is required by national planning policy to ensure that local plans safeguard mineral resources and minerals and waste development. The delivery of a minerals and waste safeguarding SPD will play an important role in ensuring that development in Kent has proper regard to safeguarding matters and that local planning authorities can deliver their obligation pursuant to the National Planning Policy Framework (para. 143).

6.2 There is an expectation by Government (DCLG) that all planning authorities have an up to date local plan in place. Without an adopted Plan, there is a risk that DCLG will step in as the plan making authority, reducing local accountability.

## **7. Equalities Implications**

7.1 The Kent MWLP was subject to a detailed EqIA which concluded that there were no equality implications. The minerals and waste safeguarding SPD does not create new policy; rather it provides further guidance on the implementation of the adopted policy and as such is adequately covered by the Kent MWLP EqIA.

## **8. Conclusions**

8.1 Safeguarding is an important aspect in the delivery of sustainable development. The amended SPD once adopted, will be a material planning consideration in the determination of all planning applications and local plan allocations affecting safeguarded mineral and waste management matters. It does not introduce new policy; rather it provides guidance on the implementation of the adopted policies within the Kent MWLP. The amended SPD will act in support of the adopted Kent MWLP and ensure that the capacity for Kent's waste arisings and minerals supply are protected and maintained for Kent's current and future residents. The recent public consultation exercise and the proposed revisions and clarification will ensure that the County Council can adopt a clear, fit for purpose and comprehensive SPD.

## 9. Recommendation

The Cabinet Member is asked to adopt the Kent Minerals and Waste Safeguarding Supplementary Planning Document March 2017 (SPD).

## 10. Background and Appended Documents

- Appendix A: Consultation Responses to Public Consultation
- Appendix B: Amended Draft Safeguarding Supplementary Planning Document March 2017:
- Environment and Transport Cabinet Committee 17 November 2016 item C6  
<https://democracy.kent.gov.uk/ecSDDisplay.aspx?NAME=SD5049&ID=5049&RPID=12561471>
- Kent Minerals and Waste Local Plan – Inspector’s Report –  
<http://consult.kent.gov.uk/file/3932748>
- Minerals and Waste Local Plan 2013-30 -  
<http://consult.kent.gov.uk/file/4073744>

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