

**From:** Peter Oakford – Deputy Leader with delegated authority for Minerals and Waste Local Plan Matters

Barbara Cooper, Corporate Director for Growth, Environment and Transport

**To:** County Council – 13<sup>th</sup> December 2018

**Decision No:**

**Subject:** Kent Minerals and Waste Local Plan 2013 – 2030 Early Partial Review, Kent Mineral Sites Plan and revised Local Development Scheme

**Classification:** Unrestricted

**Past Pathway of Paper:** Environment and Transport Cabinet Committee, Cabinet

**Future Pathway of Paper:**

**Electoral Division:** Countywide

**Summary:**

This report provides an update on the Kent Minerals and Waste Local Plan work following Council's adoption of the Kent Minerals and Waste Local Plan 2013-30 (KMWLP) in 2016. The KMWLP commits the County Council to prepare a Mineral and Waste Sites Plan to meet the need identified in the adopted Plan. The report includes Pre Submission drafts of the Kent Minerals Sites Plan and Early Partial Review of the KMWLP for County Council approval to submit to the Secretary of State for independent Examination.

Following a call for sites and site appraisal work, this report proposes a Pre-submission Draft of the Kent Mineral Sites Plan (Appendix 1) identifying sites considered suitable in principle to allocate for mineral development.

A reassessment of future waste capacity requirements in Kent as part of the Waste Sites Plan work, concluded that a Waste Sites Plan is no longer required. As a result, an Early Partial Review of the KMWLP is required. Implementation of KMWLP policies concerning mineral and waste safeguarding has also identified that modifications are necessary to improve their effectiveness. The attached Pre-Submission Draft of the Early Partial Review of the Kent Minerals and Waste Local Plan 2013-30 (Appendix 3) has been prepared to address changes proposed to the waste strategy and the safeguarding policies.

The local plan work has been considered by Environment and Transport Sub Committee (28<sup>th</sup> November 2018) and Cabinet (3<sup>rd</sup> December 2018). A decision to submit the Draft Submission Plans to the Secretary of State for independent examination is a matter for County Council. Prior to submission, the agreed Draft Plans will be subject to a statutory period for representations. Any representations received will be submitted with the Plans for consideration by the Secretary of State.

An updated Local Development Scheme is also proposed to reflect changes to the programme and timetable concerning the Early Partial Review and preparation of the Mineral Sites Plan.

**Recommendation(s):**

The County Council is asked to:

(i) Note the Council's legal advice and response in respect of the legal opinion from the promoter of the West Malling sandpit site concerning the green belt assessment.

(ii) (a) Approve and publish the Pre-Submission Drafts of the Kent Mineral Sites Plan and the Early Partial Review of the Kent Minerals and Waste Local Plan for a statutory period of representation and to submit the Draft Plans to the Secretary of State for independent examination; and,

(b) Delegate to the Corporate Director for Growth, Environment & Transport the authority to approve any non-material changes to the Mineral Sites Plan and Early Partial Review of the Kent Minerals and Waste Local Plan in consultation with the Deputy Leader prior to their publication and during their examination.

## 1. Introduction and Background

1.1 The Kent Minerals and Waste Local Plan 2013-30 (KMWLP) was adopted by the County Council in July 2016 as part of the Council's statutory responsibility to plan for future minerals supply and waste management within Kent. This Plan forms part of the Development Plan and is a key policy document for the determination of planning applications. The KMWLP sets out the County Council's strategy and policy framework for minerals and waste development in Kent which includes future capacity and supply requirements. The KMWLP commits the Council to identifying and allocating land considered suitable for minerals and waste development in a subsequent Waste Sites Plan and a Minerals Sites Plan.

1.2 At its meeting on 30 November 2017, the Environment and Transport Cabinet Committee (ETCC) considered a report on the progress of the Local Plan work. This included a reassessment of future waste capacity requirements in Kent that indicated that a Waste Sites Plan was no longer required and that an early Partial Review of the KMWLP was therefore needed. In addition, experience of implementing the Local Plan policies regarding mineral and waste safeguarding had revealed ambiguity in the wording of certain of their exempting criteria which was hindering the effectiveness of the policies. It was agreed that modifications were necessary to address this ambiguity. The Committee also recognised that a Mineral Sites Plan was still required.

1.3 The ETCC Committee in November 2017 resolved to:-

- i Undertake public consultation on options for minerals sites included in the Mineral Sites Plan – Options 2017 and associated Sustainability Appraisal Scoping Report;
- ii undertake an early partial review of the KWMLP concerning future requirements for waste management and mineral and waste safeguarding;
- iii as part of the early partial review, undertake associated public consultation on proposed modifications to the KMWLP and the associated Sustainability Appraisal Scoping Report; and,
- iv note the contents of an updated Local Development Scheme to reflect the Partial Review and changes to the timetable in terms of preparation of the Mineral Sites Plan.

Following consideration, the Cabinet Member responsible for the Local Plan took the decision to bring this resolution into effect.

1.4 This report provides an update on the Local Plan work following the public consultation referred to in paragraph 1.3 above. It proposes Pre-submission Drafts of the Mineral Sites Plan and the Early Partial Review of the Kent Minerals and Waste Local Plan 2013-30

(Appendices 1 and 3 to these papers). As County Council policy documents, decisions to approve the Pre-Submission Drafts for submission to the Secretary of State for independent examination are a matter for County Council. The Draft Plans have therefore been considered by the Environment and Transport Cabinet Committee and Cabinet where views were sought on the Local Plan work to inform the Cabinet Member responsible for the Minerals and Waste Local Plan prior to presenting the matter to County Council. The consideration by Cabinet and Environment and Environment and Transport Cabinet Committee is set out in sections 5 and 6 below.

- 1.5 Prior to submission to the Secretary of State, the County Council is required by legislation to publish the Pre-Submission Drafts for a minimum six-week period for representations on soundness and legal compliance. Any representations received are then considered by the Inspector appointed by the Secretary of State to examine the soundness and legality of the Plan (in accordance with relevant planning policy and guidance).

## **2 Mineral Sites Plan**

- 2.1 Following the adoption of the KMWLP, the County Council commenced work on the accompanying Mineral Sites Plan which will allocate sites in Kent for the types of minerals development needed to fulfil the vision and objectives of the KMWLP. This work included a review of the requirements for aggregates to be provided for by sites identified in the Mineral Sites Plan. Policy CSM2 of the KMWLP expects the Mineral Sites Plan to allocate sites for soft sand and for sharp sand and gravel based upon the most recent calculations of requirements set out in the Local Aggregates Assessment. To ensure that Kent is planning for sufficient requirements to the end of the Plan period, a review of need has been undertaken. This has identified a soft sand need of 2.5mt and a sharp sand and gravel need of 5.75 mt. However, it should be noted that the adopted KMWLP recognised that sharp sand and gravel resources in Kent are rapidly depleting. Policy CSM2 of the KMWLP therefore recognises that the need for sharp sand and gravel requirements can only be met whilst resources allow. In light of the greater abundance of soft sand resources there is no similar policy test for soft sand requirements.
- 2.2 Work began with a “Call for Sites” in late 2016, which invited nominations (e.g. from landowners and potential minerals operators) for sites to be considered for allocation to meet the KMWLP mineral supply requirements. All those parties that had previously had an interest in the Minerals and Waste Local Plan work were notified of the Call for Sites and invited to nominate sites as well as comment on a draft Site Selection Methodology. This included residents who have previously expressed an interest in minerals and waste plans in Kent, landowners, minerals and waste operators, local businesses, statutory organisations, local interest groups, parish, borough and district councils, councillors and others.
- 2.3 The Call for Sites, along with the methodology for site selection and assessment was agreed by the Cabinet Member for Planning, Highways, Transport and Waste in December 2016 following consideration of the matter at Environment and Transport Cabinet Committee in November 2016. The agreed site assessment process for the Mineral Sites Plan involves:
  - (i) Meeting the criteria in paragraph 2.4 below for a Mineral Site Option;
  - (ii) Initial screening – a refined traffic light approach with a Red Amber Green (RAG) rating based on potential effects of development against a range of assessment criteria;
  - (iii) Consultation on Site Options; and
  - (iv) Detailed Technical Assessment (DTA) to identify Preferred Options for allocation in a Pre-Submission Draft Mineral Sites Plan.

2.4 For a site to be considered a Mineral Site Option it had to:

- (i) **Align with the objectives of the KMWLP:** The site must be able to provide minerals in accordance with the future needs for minerals identified in the KMWLP.
- (ii) **Be justified:** The site must represent a suitable development opportunity based on a desktop assessment of the opportunities and constraints associated with its location.
- (iii) **Be deliverable:** Development of the site should not result in severe adverse effects that would affect its deliverability, and its development should also be supported by the landowner.

2.5 This is in accordance with Policy CSM2 of the KMWLP that sets out the following criteria for selecting and screening the suitability of sites for allocation in a Mineral Sites Plan:

- (i) The requirement for the mineral;
- (ii) Relevant development management policies;
- (iii) Relevant policies in district local plans and neighbourhood plans;
- (iv) Strategic environmental information, including landscape assessment and Habitat Regulation Assessment as appropriate;
- (v) Deliverability; and
- (vi) other national planning policy and guidance

The Policy also states that sites to be identified in a Mineral Sites Plan will generally be where viable mineral resources are known to exist, where landowners are supportive of mineral development taking place and where the Mineral Planning Authority considers that planning applications are likely to be acceptable in principle in planning terms.

2.6 In response to the Call for Sites, 19 mineral sites were promoted for consideration, nine of which were selected as 'Options,' i.e. sites that were considered potentially suitable for allocation in the Kent Minerals Sites Plan, subject to public consultation and detailed technical assessment. A Site Evaluation Document setting out how the sites were initially assessed against the methodology (stage ii in paragraph 2.3 above) was considered by ETCC in November 2017 and was subject to public consultation. The views received have informed the detailed technical assessment stage of the plan making work that is considered in this report and its appendices. A summary of the views received on the Site Options is set out in **Appendix 2**.

2.7 The Site Options subjected to detailed technical assessment (DTA) for soft sand were:

Site Ref	Soft Sand Sites	Estimated reserve
M3	Chapel Farm, Lenham	3.2mt
M8	West Malling Sandpit, Ryarsh	3.1mt (and 0.5mt of silica sand)

During the detailed technical assessment phase, the promoter amended the Chapel Farm site to remove the eastern parcel of the promoted site and minor revisions to the access route onto the A20. Further information was also provided by the promoter of Site M8 indicating where the mineral would be excavated.

2.8 The Site Options for sharp sand and gravel were:

Site Ref	Sharp Sand and Gravel Sites	Estimated reserve
M2	Lydd Quarry/Allen's Bank Ext, Lydd	3.1mt
M7	Central Road, Dartford	0.9mt
M9	The Postern, Capel	0.6mt
M11	Joyce Green Quarry, Dartford	1.5mt
M13	Stonecastle Farm Quarry Ext, Hadlow/Whested	1.0mt
M12	Postern Meadows, Tonbridge	0.23 mt
M10	Moat Farm, Five Oak Green, Capel	1.5mt

During the detailed technical assessment The Postern, Capel site (M9) was withdrawn from further consideration by the site's promoter.

- 2.9 The remaining 10 sites promoted through the call for sites were not considered to be in alignment with the KMWLP (stage (i) of the assessment process) and so were not proposed as Site Options.
- 2.10 Full details of the nine sites that progressed to the DTA stage and the outcome of the assessment can be found in the supporting document **Kent Mineral Sites Plan – Minerals Site Assessment Document 2018 (see Appendix 2)**. The DTA stage considered a range of environmental impacts including landscape and visual impact, amenity, highways and transportation, biodiversity, historic environment, waste resources and flood risk, land stability and need. It also considered where necessary an assessment of Green Belt policy. The DTA work concluded that three of the sites should progress as sites for allocation in the Minerals Sites Plan – one soft sand site and two sharp sand and gravel sites. These sites are considered acceptable in principle for mineral development, subject to planning applications demonstrating that certain development management criteria can be met. The DTA work also included Sustainability Appraisal for each site (**See Appendix 7**). The site assessment has been reconsidered in light of the legal advice referred to below relating to green belt matters. The decision whether to allocate a site or not in the Pre-Submission Draft of the Mineral Sites Plan has not changed as a result of the further consideration.
- 2.11 The Minerals Site Assessment document (**Appendix 2**) includes a summary of the views of interested parties including those of the local community. In the case of the M2 Site – Lydd Quarry and Allen's Bank the Council also received a petition opposed to the development. It has 229 e-signatures and a further 747 written signatories. The petition objects on the basis of flood risk, contamination of drinking water, increase in traffic and decrease in property values. The Council procedures on petitions require that this is brought to the attention of decision makers.

2.12 In summary, the DTA concluded the following:

M3 - Chapel Farm, Lenham - Western Site	<b>Suitable for allocation in Pre-Submission Draft Mineral Sites Plan</b> , subject to meeting development management criteria at planning application stage
M3 - Chapel Farm, Lenham - Eastern Site	Site withdrawn by promoter – due to likely unacceptable impact on heritage asset. <b>Not allocated in Pre-Submission Draft Mineral Sites Plan.</b>
M8 - West Malling Sandpit, Ryarsh	Site <b>not allocated in Pre-Submission Draft Mineral Sites Plan</b> – inconsistent with green belt policy with regard to inappropriate development. An alternative promoted soft sand site at Chapel Farm, Lenham lies outside the Green Belt and is considered acceptable in principle to meet the soft sand mineral requirements in Kent. It is not therefore reasonable to conclude that the necessary ‘very special circumstances’ exist to override the presumption against inappropriate development within the Green Belt. It is noted that the site is within the setting of the Kent Downs Area of Outstanding Natural Beauty (AONB) and the impacts upon the AONB are uncertain.
M2 - Lydd Quarry/Allen’s Bank Ext, Lydd	Site <b>not allocated in Pre-Submission Draft Mineral Sites Plan</b> - Likely unacceptable impacts upon the Dungeness, Romney Marsh and Rye Bay Special Protection Area (SPA), the Special Area of Conservation (SAC) and the Ramsar Site; Likely unacceptable impact upon the Dungeness, Romney Marsh and Rye Bay Site of Special Scientific Interest (SSSI). In respect of parcel 23 (Allen’s Bank), the likely unacceptable impact upon archaeological interests. It is noted that the impact upon the setting and character of the historic town of Lydd is uncertain.
M7 – Central Road, Dartford	Site <b>not allocated in Pre-Submission Draft Mineral Sites Plan</b> – Likely unacceptable highway impacts on Bob Dunn Way (A206) and on M25 Junction 1a (Dartford Crossing), likely unacceptable loss of biodiversity habitat, impact upon Local Wildlife Sites (LWS) and UK Biodiversity Action Plan (BAP) interests, likely unacceptable impacts on residential amenity, likely unacceptable air quality impact on AQMA and conflict with Local Plan open space objectives.
M10 - Moat Farm, Five Oak Green, Capel	<b>Suitable for allocation in Pre-Submission Draft Mineral Sites Plan</b> , subject to meeting development management criteria at planning application stage
M11 – Joyce Green Quarry, Dartford	Site <b>not allocated in Pre-Submission Draft Mineral Sites Plan</b> - Likely unacceptable highway impacts on Bob Dunn Way (A206) and on M25 Junction 1a (Dartford Crossing), likely unacceptable air quality impact on AQMA, likely unacceptable loss of biodiversity habitat, impact upon LWS and UK Biodiversity Action Plan (BAP) interests and uncertainty that restoration proposals would meet ecological objectives to replace habitat and conflict with Local Plan open space objectives. The mineral proposal is

	considered to be inappropriate development within the Green Belt through restoration proposals and harm arising from highway impacts, air quality and biodiversity impacts.
M12 - Postern Meadows, Tonbridge	Site <b>not allocated in Pre-Submission Draft Mineral Sites Plan</b> - insufficient evidence to complete DTA in order to conclude with any certainty that the development is acceptable in principle for mineral development.
M13 - Stonecastle Farm Quarry Ext, Hadlow/ Whested	Suitable <b>for allocation in Pre-Submission Draft Mineral Sites Plan</b> , subject to meeting development management criteria at planning application stage
M9 The Postern, Capel	Site withdrawn by Promoter – unable to demonstrate acceptable access. <b>Not allocated in Pre-Submission Draft Mineral Sites Plan.</b>

The three sites considered suitable for allocation are set in the Pre-Submission Draft of the Minerals Sites Plan included at **Appendix 1**.

### 3. Early Partial Review of the KMWLP including Need for a Waste Sites Plan

3.1 The Early Partial Review of the KMWLP proposes modifications in the following areas:

#### A. Waste Management:

- The strategy for provision of future waste management capacity
- The identification of site allocations for waste management facilities

#### B. Safeguarding - The approach to safeguarding mineral resources and waste management and minerals supply infrastructure.

The paragraphs below and the supporting evidence to this report set out the justification for proposed changes identified by the Early Partial Review. The detail of the proposed changes is set out in the Pre-Submission Draft - Early Partial Review of the Kent Minerals and Waste Local Plan 2018 which is attached at **Appendix 3**

- 3.2 The adopted KMWLP identified a shortfall in waste management capacity over the Plan period for the following types of waste management: waste recovery (energy from waste and organic waste treatment), hazardous waste, and the disposal of dredgings. To improve certainty concerning the provision of the required capacity, policies CSW7, CSW8, CSW12 and CSW14 commit the County Council to allocating sites suitable for accommodating related waste facilities in a Waste Sites Plan. Policy CSW4 sets the strategy context for waste management capacity. Calculation of the future waste management capacity requirements in the KMWLP had been undertaken in 2012 and so preparation for the Waste Sites Plan involved a review of those requirements to ensure that the amount of new capacity planned for is robust.
- 3.3 A key driver for the review of waste requirements was the implementation of a planning permission for a significant new waste recovery facility at Kemsley which meant that the amount of existing waste management capacity used to inform the approach in the KMWLP was no longer robust. Planning permission was granted in 2012 for the Kemsley Sustainable Energy facility, which would provide capacity for around 500,000tpa of non-hazardous waste recovery. During the preparation of the KMWLP, there was considerable uncertainty over

whether the facility would be built and so it was considered prudent not to factor this into the assessment of future capacity requirements. However, in August 2016, shortly after the adoption of the KMWLP, work commenced on the construction of the Kemsley facility, clearly indicating that the capacity would in fact be realised, substantially eliminating the waste recovery capacity shortfall identified in the KMWLP of 562,500tpa.

- 3.4 The adopted KMWLP also identified that sites would be identified in a Waste Sites Plan for hazardous waste (specifically landfill of asbestos) (policy CSW12) and for the disposal of dredgings (policy CSW14). Notwithstanding this policy support, the 'Call for Sites' did not reveal any need or support from industry, including the Port of London Authority, for the allocation of related sites.
- 3.5 In terms of additional organic waste treatment capacity, the review of waste requirements concluded that, while there is sufficient capacity within Kent to meet recycling and composting requirements overall, further organic waste treatment capacity could be justified; however, it is considered that the Plan's policies are sufficiently supportive, such that the identification of specific sites to provide any additional certainty that development will come forward, is not justified.
- 3.6 Overall, the review of waste requirements indicated that there was no need for additional waste recovery capacity and that there was insufficient justification for a Waste Sites Plan. As a result, changes to a number of the adopted KMWLP waste policies and explanatory text are required to remove the commitment to identify sites within a separate Waste Sites Plan. This will help ensure that there is no over-supply of recovery capacity within Kent. A change to adopted policies can only be realised via modifications which the County Council is statutorily obliged to publish for representations and then submit to the Secretary of State for independent examination.
- 3.7 Public consultation on these proposed changes as set out in the 'Kent Minerals and Waste Local Plan 2013-2030 Partial Review 2017' consultation document was undertaken between December 2017 and March 2018 and a summary of the comments received, with officer response, is set out in **Appendix 5**. Key concerns were raised that the revised waste needs assessment underpinning the partial review underestimates the future need for waste recovery capacity because it overestimates recycling performance and underestimates baseline arisings and the network of waste management infrastructure in Kent should be enhanced to realise associated benefits. These benefits include incineration with energy recovery facilities provide substantial inward investment, jobs and a supply of renewable/low carbon power and/or heat. Further representations suggest that the KMWLP Partial Review should acknowledge that additional organic waste treatment capacity is required.
- 3.8 The Partial Review work has been reconsidered in light of the concerns raised. This work has confirmed that the baseline assessments are robust. Changes have been made to recycling and recovery targets in Policy CSW4 which reflect actual measured performance in Kent and recent EU targets. As set out in **Appendix 5** and in the Pre- Submission Draft of the Plan (**Appendix 3**) and its supporting evidence, no other significant changes are proposed to the strategy set out in the Kent Minerals and Waste Local Plan 2013-2030 Partial Review 2017 consultation document.

#### **4. Minerals and Waste Safeguarding**

- 4.1 Given the need for an early Partial Review (as described above), the opportunity has also been taken to consider whether there are other elements of the KMWLP which may benefit from amendment in light of 24 months' experience of implementing its policies. Generally, it is considered that the KMWLP is performing as intended; however, one matter has arisen in relation to the safeguarding of mineral resources and minerals and waste management

infrastructure. Implementation of the safeguarding policies DM 7 and DM 8 has revealed an ambiguity that means the policies are not being implemented wholly as intended.

- 4.2 Amongst other aims, the intention of these safeguarding policies is to ensure that development on sites for non-mineral development (i.e. housing and commercial) allocated in a Borough or District Local Plan would be exempt from the KMWLP's safeguarding provisions **if** the need to safeguard any mineral resource underlying the site, and/or proximate minerals and waste infrastructure, had been assessed and factored into the decision to allocate the sites. In practice, however, there have been occasions where the policies are being interpreted to exclude any site allocations in adopted development plans from the safeguarding process, regardless of whether minerals and waste safeguarding matters were considered during the site allocation process. This is not the intention of the policies, nor national policy guidance, and it has the potential to undermine the effectiveness of these policies. The Early Partial Review provides the opportunity to address this matter.
- 4.3 Proposed minor changes to policies DM7 and DM8, as well as supporting text to ensure that the safeguarding intention of the KMWLP is effective was the subject of public consultation between December 2017 and March 2018. A workshop was also held with the Borough and District Councils to discuss the proposal and invite comments. Details of the views received are set out in **Appendix 5** along with officer response. A number of minor changes have been made to related explanatory text to address concerns. The proposed revisions to the adopted Safeguarding policies and explanatory text are set out in the Pre-Submission Draft of the Early Partial Review of the Kent Minerals and Waste Local at **Appendix 3**.

## 5. Consideration by Environment and Transport Cabinet Committee

- 5.1 A similar report to this one, was reported to the Environment and Transport Cabinet Committee (ETCC) on 28 November 2018 for it to consider and endorse, or make recommendations to the Cabinet Member responsible for the Minerals and Waste Local Plan on the local plan work.
- 5.2 Prior to consideration, the Committee received a number of late representations from:
- (a) Brett Group, the promoter of the M2 Lydd Quarry Site
  - (b) Local resident on behalf of Whetsted Residents in respect of the M10 and M13 sites at Stonecastle Farm and Moat Farm
  - (c) Ryarsh Protection Group in respect of M8 West Malling Site

which it noted and considered. It also received a copy of a legal opinion dated 27<sup>th</sup> November 2018 from the promoter of the West Malling, Ryarsh site (M8) advising that in their view, the Council's methodology which led to the exclusion of the site on green belt grounds was flawed. A copy of the opinion and the late representations are attached at **Appendix 9**.

- 5.3 The ETCC resolved (amongst other matters) to note that the County Council was seeking legal advice in respect of the M8 promoter's legal opinion referred to above. It also noted that the advice received by the County Council would inform the consideration of the Pre-Submission Draft of the Mineral Sites Plan by Cabinet. This legal opinion was expected in advance of the 3 December meeting.

## 6 Consideration by Cabinet

- 6.1 A similar report was also reported to Cabinet on 3<sup>rd</sup> December. It considered the report and noted the late representations that had been received by Cabinet Committee referred to in paragraph 5.2 above. In respect of the promoter's legal advice relating to the green belt considerations of the West Malling site (M8), it received legal advice from Invicta Law and

Isabella Tafur, Counsel at Francis Taylor Buildings responding to the matter raised. A copy of the advice is found at **appendix 10**.

- 6.2 Cabinet noted that in light of the advice, officers had reconsidered the green belt considerations for the mineral sites with particular reference to the Europa oil and gas case law and Counsel's advice in respect of what may and may not be relevant in considering inappropriate development within the Green Belt. It noted that a final version of the assessment was in preparation and would be included in the report for County Council who are responsible for determining whether the Pre-submission draft of the Minerals Sites Plan should be approved for submission to the Secretary of State for examination. Officers however advised that the reconsideration of the green belt matters in the case of the West Malling site, still concluded that the mineral excavation development would constitute inappropriate development within the green belt and that the allocation of the site would be inconsistent with green belt policy. The site is not allocated in the Pre-submission draft of the Minerals Sites Plan.
- 6.3 In addition to the green belt considerations, as a result of matters raised at ETCC and Cabinet, the local plan work has been revised to clarify the development management criteria for the Moat Farm, Five Oak Green Site in relation to water resources and the need to demonstrate at planning application stage that the site will have no adverse impacts on hydrology or hydrogeology; that opportunities to use the river for the Moat Farm and Stonecastle Farm sites should be explored and that the saved brickearth policy from the Mineral Subject Plan: Brickearth 1986 will be superseded by the adoption of the Kent Minerals Sites Plan.
- 6.4 The Pre-submission Draft of the Minerals Sites Plan at **Appendix 1** incorporates the above changes. The Kent Mineral Sites Plan - Mineral Site Assessment 2018 document at **Appendix 2** includes the revised consideration of green belt matters.

## **7. Next Steps**

- 7.1 Following consideration by ETCC and Cabinet, the County Council is asked to agree that the Pre-Submission Draft Plans be submitted to the Secretary of State for independent Examination by a Government-appointed inspector. Prior to submission the Plans will be published for a statutory period for representations on soundness and legal compliance in accordance with Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).
- 7.2 During the examination, the Inspector will consider all representations received and may choose to convene public hearings. If requested by the Council, the Inspector can discuss changes needed to ensure soundness (known as 'main modifications'). If such changes are necessary, these will be reported to this Cabinet Committee, Cabinet and County Council for agreement prior to being published for representations. Ultimately, the Mineral Sites Plan and modifications to the KMWLP can only be adopted by the County Council following receipt of an Inspector's report that finds the Plan and the modifications sound and legally compliant. Adoption of the Plan and the modifications would then be considered by ETCC, Cabinet and County Council.
- 7.3 During the process, minor non-material changes (e.g. changes related to grammar and clarity) may be needed, and it is proposed that the agreement to such changes be delegated to the Corporate Director for Growth, Environment & Transport in consultation with the Deputy Leader.

## 8 Revised Local Development Scheme

- 8.1 The Local Development Scheme sets out the County Council's programme for preparing minerals and waste planning documents. The current Local Development Scheme, which was adopted in December 2017 anticipated submission of the Plan to the Secretary of State following the pre-submission consultation in January 2019. This needs to be updated to reflect the updated timetable. The revised timetable for the preparation of the Minerals Sites Plan and KMWLP Partial Review, to be included in the Scheme, is set out in the table below.

Stage	Dates
Second Call for Sites	November 2016 - January 2017
Minerals Sites Options and KMWLP Partial Review Consultation (Reg 18)	December 2017 – March 2018
Pre-Submission Plan Consultation (Reg 19)	December 2018 – February 2019
Submission	March/April 2019
Independent Examination Hearing	June/ July 2019
Inspector's Report	October 2019
Adoption	December 2019

## 9. Financial Implications

- 9.1 The costs of preparing the Kent Mineral Sites Plan Options and the early Partial Review of the MWLP are met from the Environment, Planning and Enforcement Division's budget.

## 10. Policy Framework

- 10.1 The Kent Mineral Sites Plan and the policies within the KMWLP itself support the County Council's corporate policies contained within the Council's Strategic Statement 'Increasing Opportunities, Improving Outcomes – Kent County Council's Strategic Statement 2015-2020'. The Minerals Sites Plan will support and facilitate sustainable growth in Kent's economy and support the creation of a high-quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being.

## 11. Legal Implications

- 11.1 The County Council has a legal obligation under the Town and Country Planning Acts to prepare a statutory Development Plan for planning purposes (commonly known as the Local Plan) .

- 11.2 The County Council is also required by national planning policy to ensure that local plans promote sustainable minerals and waste development. The early partial review will play an important role in ensuring that minerals and waste development in Kent is in line with national planning policy.
- 11.3 There is an expectation by the Minister for Housing, Communities and Local Government (MHCLG) that all planning authorities have an up to date local plan in place. Without an up to date adopted plan, there is a risk that MHCLG will step in as the plan making authority, reducing local accountability.

## 12. Equalities implications

- 12.1 An equality impact assessment (EQIA) has been completed and no equality implications have been identified. A copy of the assessment is attached at **Appendix 8**. The earlier Local Plan work was accompanied by a separate EQIA.

## 13. Conclusion

- 13.1 The Town and Country Planning Acts requires the County Council to prepare a Development Plan setting out how mineral and waste planning matters will be considered in Kent. The KMWLP adopted in July 2016 sets out the overarching strategy and vision until 2030 and commits the County Council to preparing Mineral and Waste Sites Plans that allocate individual sites for development that align with the KMWLP strategy.
- 13.2 Preparation work for the Waste Sites Plan concluded that the waste capacity requirements for Kent had essentially been met and that a Waste Sites Plan is no longer justified. As a result, an early partial review of the KMWLP is required. Implementation of KMWLP policies concerning mineral and waste safeguarding has also identified that minor modifications are necessary to improve their effectiveness. The attached Pre-Submission Draft of the Early Partial Review of the Kent Minerals and Waste Local Plan 2013-30 (**Appendix 3**) has been prepared to address changes proposed to the waste strategy and the safeguarding policies.
- 13.3 In respect of the Minerals Sites Plan, following a call for sites and site appraisal work, this report proposes a Pre-submission Draft of the Kent Minerals Sites Plan (**Appendix 1**) allocating sites considered suitable in principle for mineral development. Public consultation and views of technical consultees have informed both Draft Pre-submission Plans.
- 13.4 A decision to submit the Draft Plans for Examination to the Secretary of State is a matter for County Council. Once agreed the Draft Plans will be published to allow representations (known as Regulation 19 Consultation). The Draft Plans and any representations will then be submitted to the Secretary of State for independent examination.
- 13.5 An updated Local Development Scheme is proposed to reflect changes to the programme and timetable concerning preparation of the Mineral Sites Plan and the Early Partial Review.

## 14. Recommendation

### **Recommendation(s):**

The County Council is asked to:

- (i) Note the Council's legal advice and response in respect of the legal opinion from the promoter of the West Malling sandpit site concerning the green belt assessment.
- (ii) (a) Approve and publish the Pre-Submission Drafts of the Kent Mineral Sites Plan and the Early Partial Review of the Kent Minerals and Waste Local Plan for a statutory period of representation and to submit the Draft Plans to the Secretary of State for independent examination; and,
  - (b) Delegate to the Corporate Director for Growth, Environment & Transport the authority to approve any non-material changes to the Mineral Sites Plan and Early Partial Review of the Kent Minerals and Waste Local Plan in consultation with the Deputy Leader prior to their publication and during their examination.

## 15. Contact details

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### **Appendices**

Please note that this report is accompanied by a number of appendices. Given their size, these appendices have been published on the County Council's website alongside the agenda and are available via the modern.gov app. A hard copy of all the appendices is available in the Member's Room, the 3 Group Offices and on request from Members Desk ([members.desk@kent.gov.uk](mailto:members.desk@kent.gov.uk)).

#### **Appendix 1:**

Kent Mineral Sites Plan – Pre-Submission Draft 2018

#### **Appendix 2:**

Kent Mineral Sites Plan – Minerals Site Assessment Document 2018

#### **Appendix 3:**

Early Partial Review of the Kent Minerals and Waste Local Plan 2013-30 – Pre- Submission Draft 2018

**Appendix 4:**

Kent Minerals and Waste Local Plan 2013-30 - Updated Local Development Scheme – timescale 2018

**Appendix 5**

Partial Review of the Kent Minerals and Waste Local Plan 2013-30 – Summary of Issues Raised 2018

**Appendix 6:**

Sustainability Appraisal of the Kent MWLP Partial Review 2018

**Appendix 7:**

Sustainability Appraisal of the Kent Minerals Sites Plan 2018

**Appendix 8:**

Kent Minerals and Waste Local Plan 2013-30 Partial Review 2018 and Kent Minerals Sites Plan 2018 - Equality Impact Assessment

**Appendix 9:**

Representations received by ETCC post publication of ETCC papers for meeting on 28<sup>th</sup> November 2018

**Appendix 10:**

Legal advice from Invicta Law and Isabella Tafur, Counsel at Francis Taylor Buildings responding to the greenbelt matter raised by the promoter of the West Malling site (M8).

**Background Documents**

[Kent Minerals and Waste Local Plan 2013-30](#)

[Site Identification and Selection Methodology 2018](#)

[Kent Minerals Sites Plan – Mineral Site Selection – Initial Assessment November 2017](#)

[Kent Minerals Sites Plan Options 2017 Consultation document](#)

[Soft Sand Topic Paper 2018](#)

[Sharp Sand and Gravel Topic Paper 2018](#)

[Kent County Council - Local Aggregate Assessment DRAFT 2018](#)

[Kent Minerals Sites Plan – Appraisal of Landscape and Visual - Axis 2018](#)

[Kent Minerals Sites Plan - Land Stability report - Axis 2018](#)

[Topic Papers – Waste Assessment – BPP 2017](#)

Waste Evidence Topic Papers – 2018

BPP Consulting Kent Waste Needs Assessment 2018 Specifically:

- [Non-Hazardous Waste Recovery Capacity Requirement, November 2018;](#)
- [Non-Hazardous Waste Recycling/Composting Capacity Requirement, November 2018;](#)

- *Hazardous Waste Needs Assessment, November 2018.*

Scoping Report – Sustainability Appraisal of the Kent MWLP Partial Review

Scoping Report – Sustainability Appraisal of the Kent Minerals Sites Plan- Making Process

Habitats Regulation Assessment

SFRA and Water Resource Reports (Available on Request)

Kent Minerals and Waste Local Plan 2013-30 Updated Local Development Scheme – 2017

Kent Minerals and Waste Local Plan 2013-30 - Equality Impact Assessment 2017

Statement of Community Involvement