

Summary of Issues Raised in comments on Regulation 18 Consultation of Early Partial Review of the Kent Minerals and Waste Local Plan

1.0 Introduction

Public consultation on proposed changes to policies in the adopted Kent Minerals and Waste Local Plan set out in the Draft Early Partial Review was undertaken between December 2017 and March 2018. The consultation concerned modifications to policies in two areas:

Strategic policies on waste management

- Policies CSW 4, CSW 7, CSW 8 (Non-hazardous waste)
- Policy CSW 12 (Hazardous waste)
- Policy CSW 14 (Disposal of Dredgings)

Policies relating to landwon minerals and minerals and waste management infrastructure safeguarding:

- Policy DM 7 (Safeguarding Mineral Resources)
- Policy DM 8 (Safeguarding Minerals Management, Transportation, Production & Waste Management Facilities)

Eight comments were received on the proposed modifications to policies in the adopted Kent Minerals and Waste Local Plan concerning waste management. In respect of the proposed modifications to the Waste Strategy, comments were received from 7 Stakeholders including 4 businesses and 3 organisations. The County Council received 14 responses in relation to proposed changes to the Mineral and Waste Safeguarding policy. This document provides an overview of the comments that were received, along with the Council's response. This document is based on a more detailed consultation summary document.

2.0 Comments regarding modifications to policies concerning waste management

ISSUE: REMOVAL OF REQUIREMENT TO PREPARE A WASTE SITES PLAN INCLUDING ALLOCATIONS FOR NON-HAZARDOUS WASTE 'OTHER' RECOVERY CAPACITY		
Ref	Summary of comments	KCC Response
1	The data underpinning the partial review underestimates the future need for waste recovery capacity because it:	
1a	- overestimates recycling performance;	Proposed revision to recycling targets have been reviewed and revised in light of current performance for Kent LACW and forthcoming target rates in the EU Circular Economy Package which the UK government has committed to sign up to.
1b	- underestimates baseline arisings due to: 1. failure to account for waste arising in the South East that has not been specifically identified in the Environment Agency Waste Data Interrogator as coming from a particular Waste Planning area and may therefore actually arise in Kent, as Kent is within the former South East region (known as 'non-attributed waste') and 2. the risk that Brexit may bring concerning the continuation of RDF export from Kent ports to mainland Europe;	<p>A spatial analysis of waste arising in the South East but not specifically identified as coming from a particular Waste Planning area has been undertaken. This confirms that the approach of only counting such waste managed at Kent sites is robust.</p> <p>The updated Waste Needs Assessment does consider RDF outputs from Kent sites. Planning for the management of waste above and beyond the quantities produced in Kent such as RDF transported from outside Kent to ports in Kent for export to mainland Europe is not consistent with the adopted Plan's objective of achieving net self-sufficiency. That is to say there is no expectation that the management of a quantity of waste greater than the equivalent tonnage expected to be produced in Kent should be planned for.</p> <p>Moreover a market intelligence review of RDF export arrangements demonstrates that the current flow of RDF from UK to mainland Europe is set to continue for a number of years and certainly beyond the initial Brexit timetable.</p>
1c	- underestimates future arisings due to overly conservative forecasting.	The original forecasts have been reviewed and it is considered that the growth rate used to project future waste arisings is robust. The forecast used allows for an increase in waste production while taking account of a de-coupling between waste arisings and economic growth/household expenditure, as evidenced by recent trends and consistent with approaches promoted by national policy.

		<p>Projections based on short term historical patterns of growth are likely to result in inaccurate forecasts as these will not take account of the variable rates of growth experienced over the full economic cycle of say a decade. Providing on the basis of recent sudden growth may result in over providing excess other recovery capacity which may then draw and lock waste in to a form of management that is below recycling in the Waste Hierarchy.</p>
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ISSUE: REMOVAL OF REQUIREMENT TO PREPARE A WASTE SITES PLAN INCLUDING ALLOCATIONS FOR NON-HAZARDOUS WASTE 'OTHER' RECOVERY CAPACITY		
Ref	Summary of comments	KCC Response
2	<p>The network of waste management infrastructure in Kent should be enhanced to realise associated benefits. For example, incineration with energy recovery facilities provide substantial inward investment, jobs and a supply of renewable/low carbon power and/or heat.</p>	<p>The updated Waste Needs Assessment confirms that there is already sufficient capacity to meet the predicted need for the management of the equivalent tonnage of Kent arisings through recycling/composting and Other Recovery for the Plan period; providing the desired levels of diversion of waste from non-hazardous waste landfill. In particular the updated WNA confirms the finding that there is no identified need for additional EfW or Other Recovery capacity at this time. The WNA shows that the capped requirement for other recovery capacity in the adopted Plan has already been met by the construction of Kemsley SEP.</p> <p>The amended Plan allows for the development of additional capacity that results in waste being managed further up the waste hierarchy. The amended Plan does not rule out the possibility of additional energy recovery capacity being developed, however Government policy and regulations clearly oblige the Authority to give preference to management further up the hierarchy wherever possible with recent suggestion of an incineration tax.</p>

ISSUE: REMOVAL OF REQUIREMENT TO PREPARE A WASTE SITES PLAN INCLUDING PROPOSED ALLOCATIONS FOR GREEN/KITCHEN WASTE TREATMENT CAPACITY		
Ref	Summary of comments	KCC Response
3	The KMWLP Partial Review should acknowledge that additional organic waste treatment capacity is required.	<p>Recycling and Composting is on the same level of the waste hierarchy. The updated Review of Non-Hazardous Waste Recycling/Composting Capacity confirms that the predicted capacity available within Kent will exceed overall recycling and composting requirements by a substantial margin. There is no requirement to specifically provide for a type of capacity given that net self sufficiency is the objective. That is to say organic waste may flow to facilities outside Kent while waste may flow into Kent for recycling, maintaining an overall balance.</p> <p>In any event the amended Plan promotes development of additional capacity (without a cap) that will move waste up the hierarchy so appropriate proposals for the treatment of green and/or kitchen waste will be viewed favourably. The Plan has no preference between composting and anaerobic digestion capacity i.e. is technology neutral with respect to organic treatment capacity, which is consistent with National Policy Practice advice.</p>
ISSUE: REMOVAL OF REQUIREMENT TO PREPARE A WASTE SITES PLAN INCLUDING PROPOSED ALLOCATION FOR ASBESTOS LANDFILL		
Ref	Summary of comments	KCC Response
4	A number of Waste Planning Authorities from whose area asbestos waste went to landfill in Kent previously have made representations expressing concern about the removal of the commitment to allocate a site in Kent for asbestos landfill.	<p>The updated WNA indicates the need for additional asbestos landfill capacity identified in the original Needs Assessment is no longer apparent. In particular the need to accommodate predicted arisings of asbestos waste arising in Kent ¹ indicates that current disposal capacity will be sufficient for the Plan period. Data obtained for remaining void at Pinden Quarry Landfill suggests that, if inputs of asbestos waste were limited to an amount equivalent to the arisings in Kent over the plan period then there is likely to be sufficient capacity. It is therefore considered that the identification of a specific additional landfill for hazardous waste (asbestos CDEW) to manage predicted Kent arisings (c 7,000tpa) is not justified. If industry were to pursue a further site in future, then the criteria-based policy CSW9 (Non Inert Landfill) would allow such a site to be permitted (subject to compliance with development management policies).</p> <p>(It should be noted that the approach taken in the adopted KMWLP was informed by the fact that a proposal to include an extension to Pinden Quarry Landfill as an allocation was put forward by the operator during the first call for sites in 2012.</p>

¹ BPP Consulting Waste Needs Assessment 2018

	<p>This is on the basis that hazardous waste facilities have a wider than local catchment area due to their specialist nature.</p>	<p>However, no such proposal was put forward in response to the second call for sites in 2016-2017. Nor has an application been forthcoming)</p> <p>With respect to the aspiration for maintaining net self sufficiency in hazardous waste management capacity overall this will be met by the Plan's provision of additional hazardous waste landfill capacity (for air pollution control residues) at Norwood Farm. Moreover provision of hazardous waste management capacity is not normally a matter targeted for local self sufficiency. Hence the current objective of seeking to be self-sufficient for this waste stream goes above and beyond national policy expectation.</p> <p>A review of alternative outlets utilised by WPAs expressing concerns indicates that there are a variety of alternative outlets available to accept waste previously accepted at Pinden Quarry , continued availability of which is for those authorities to investigate and establish as part of their waste planning obligation.</p>
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3.0 Comments regarding modifications to policies concerning landwon minerals and minerals and waste management infrastructure safeguarding

ISSUE: CHANGES TO POLICIES DM7 AND DM8 NOT ACCEPTABLE		
Ref	Summary of comments	KCC Response
5	The new wording moves responsibility for assessments to the Local Authority	Minerals considerations should be assessed as any other constraint as part of the Local Plan process. Local Authorities should require developers to submit a minerals assessment as they would a Flood Risk Assessment and send to KCC's Minerals and Waste team for appraisal.
6	The proposed wording may have effects on deliverability of housing allocations in Local Plans; undermine Districts' 5-year housing supply and the viability of housing provision	Mineral safeguarding is an important planning consideration in the determination of planning applications . The NPPF states that safeguarded minerals should not be needlessly sterilised. Minerals assessments would be used to assess whether a site should be exempt from safeguarding, is appropriate for prior extraction or should remain safeguarded. The revised policy wording will ensure that the Mineral Safeguarding matters are properly considered in decision making. Prior extraction and safeguarding will also help the sustainability of housing delivery over plan periods, as it ensures that the required materials to build the planned houses will not be lost.
7	Inconsistencies need rectifying where some parts of the Minerals Safeguarding Areas were amended to avoid housing allocations whereas others did not. The	The proposed policy wording seeks to address the inconsistency in interpretation . The need to review MSAs can be addressed as part of the annual monitoring process. .

	MSAs should be annually reviewed as stated in the MWLP to rectify this	
8	The proposed caveat that allocated sites should consider mineral and waste safeguarding should not be applied retrospectively as these changes would contradict the inspector's modifications at the MWLP's examination that safeguarding policies are not retrospective	The Inspectors comments stated that the original detail in the draft plan would not be needed as it makes the plan 'overly wordy'. Recent evidence has shown this to be erroneous.
9	These changes would contradict the inspector's findings at the recent Maidstone Borough Local Plan's examination, that certain allocations within it did not require minerals assessment due to the lack of market for the mineral	Policy DM7 states that sites are exempt from safeguarding if the promoter can demonstrate that the mineral is not economically viable.
10	KCC have failed to engage with Local Planning Authorities on how successfully applying the safeguarding criteria in their development management decisions would work in practice. KCC should also engage and be engaged earlier in the Local Plan process to determine whether a site is acceptable in Minerals Planning terms	The County Council has prepared a Supplementary Planning Document (SPD) on Safeguarding to address this matter. Prior to its preparation, a workshop was held with Borough Council's in Kent. In light of comments received, the SPD is to be updated and agreed through Statements of Common Ground. Upon request, individual discussions on safeguarding matters on a case by case basis take place between County Council and Borough Council offices.
11	Such a change in policy could render local plan's within Kent 'out of date'	This should not be the case. Local Plans in any event, are required to be reviewed every 5 years. Failure to take safeguarding matters into account in decision and plan making risks unsound planning decisions.

12	Kent County Council should produce evidence providing details of cases whereby it considers the policies to have been ineffective and why	Published as part of Partial Review documents.
13	The wording should be amended to: “(7) it constitutes development on a site allocated in the adopted development plan where consideration of any one of the above factors (1-6) concluded that minerals resources will not be needlessly sterilised.	The current wording makes it clear that one of the criteria being met can allow the site to be exempt.
14	DM8 wording should be amended to: “(2) it constitutes development on the site that has been allocated in the adopted development plan where consideration of any one of the above factors can be documented to have taken place in the formulation of the plan and/or allocation of the site has demonstrably confirmed that the specified which conclude that the safeguarding of minerals management, transportation production and waste management facilities has been fully considered and it was concluded that certain type of non-mineral and waste development in those locations would be acceptable.”	The current wording makes it clear that one of the criteria being met can allow the site to be exempt. The suggested “ <i>Has demonstrably confirmed that the specified</i> type of non-mineral and waste development in those locations would be acceptable” does not provide enough protection to adequately safeguard a site.
15	The Port of London Authority refer to their comments at the Examination of the MWLP.	These comments were considered by the Inspector at the KMWLP Examination. They were incorporated into the Plan at the Main Modifications stage

16	DM7, criteria 7 should be amended to <i>“It constitutes development on a site allocated in the adopted development plan and the applicant is able to demonstrate compliance with criteria 1-6 above.”</i>	The current wording makes it clear that one of the criteria being met can allow the site to be exempt. Does not provide enough protection to adequately safeguard a site if minerals planning points have not been taken into account at allocation.
17	DM8, criteria 2 should be amended to <i>“It constitutes development on a site allocated in the adopted development plan and the applicant is able to demonstrate compliance with criteria 1, 3-7 above”.</i>	The current wording makes it clear that one of the criteria being met can allow the site to be exempt. Does not provide enough protection to adequately safeguard a site if minerals planning points have not been taken into account at allocation.