



Kent County Council

**Independent Examination of the Kent Minerals
and Waste Local Plan 2024-2039**

Inspector's Preliminary Matters

26th July 2024

Duty to Cooperate (DtC) - Statements of Common Ground (SoCG)

- 1. In the submitted Duty to Cooperate Report, dated May 2024, paragraph 3.5 provides a summary list of current SoCG. It indicates that some of the SoCG are "Not in Place".**

Please could the Council:

- a) clarify the current position on the SoCG which are absent;**
 - b) confirm whether there are any outstanding issues arising from the DtC;**
- and,**

Table 6 of the Duty to Cooperate Report (SD03) (pages 45 and 46) set out the position of Statements of Common Ground at the time of submission. Since submission, work has been ongoing to finalise any required documents. The current position is set out below.

Ashford Borough Council were contacted in December 2023 and invited to work together to review and update the SoCG that was prepared with the County Council on minerals and waste matters which was dated June 2018. This SoCG specifically addressed mineral safeguarding implications on the emerging allocations of the Ashford Local Plan, at that time. Discussions are ongoing with Ashford Borough Council with respect to updating the SoCG. A meeting to progress this is scheduled for 5th August 2024.

Dover District Council (DDC) were contacted in December 2023 and again in February 2024 and invited to work together to produce a SoCG on minerals and waste matters. In February 2024 the County Council advised DDC that if we did not receive a response from them by 20th February 2024 with respect to the need to commence a SoCG on minerals and waste matters, then it would be assumed that DDC did not feel that it was necessary for a SoCG between the Councils as part of the current Local Plan review. No response was received from DDC.

In addition, Dover District Council were consulted in January 2024 as part of the Regulation 19 consultation, on the Pre-Submission Draft of the Kent Minerals and Waste Local Plan 2024-39. Their response was received after the statutory closing deadline of the 29th of February 2024, and their representation was not submitted to the Planning Inspectorate as part of the formal submission. In their representation, DDC commented (summarised) that

"We noted that policies DM7 and DM8 are unchanged from the current versions in terms of safeguarding mineral resources and transportation facilities. We also note and support the continued protection of Dunkirk Jetty as a wharf for minerals transportation as listed in Policy CSM6 and supporting text and therefore the continuing requirement for KCC Minerals and Waste to be consulted on applications/proposed allocations within 250m of the safeguarded site. We note and welcome the fact that there is now a SPD available on safeguarding mineral resources in support of policies DM7 and DM8, and that guidance on the Circular Economy Statements required from major applications under Policy CSW3 is now

advised to be forthcoming as per our request in response to the first Reg18 consultation, with reference made to the GLA guidance in the meantime. We look forward to engaging further on the topic as the Plan emerges.”

No significant concerns were raised in their representation, supporting the view that a SoCG is not considered necessary at this time.

Folkestone and Hythe District Council (FHDC) were contacted in December 2023 and again in February 2024 and invited to work together to produce a SoCG on minerals and waste matters. In February 2024, the County Council advised FHDC that if we did not receive a response from them by 20th February 2024 with respect to the need to commence a SoCG on minerals and waste matters, then it would be assumed that FHDC did feel that it was necessary for a SoCG between the Councils as part of the current Local Plan review. No response was received from FHDC.

The County Council has noted the representation made by Folkestone and Hythe District Council on 29th February 2024 on the Pre-Submission Draft of the Kent Minerals and Waste Local Plan 2024-39, specifically in relation to policies CSW 16 and DM 8. The County Council considers that Policy DM 8 of the emerging plan adequately sets out the exceptions to safeguarding waste management facilities and allows for the consideration of any material issues that arise that may indicate that need for development overrides the presumption for safeguarding.

Gravesham Borough Council (GBC) were contacted in December 2023 and again in February 2024 and invited to work together to produce a SoCG on minerals and waste matters. In February 2024 the County Council advised GBC that if we did not receive a response from them by 20th February 2024 with respect to the need to commence a SoCG on minerals and waste matters, then it would be assumed that GBC did not feel that it was necessary for a SoCG between the Councils as part of the current Local Plan review. No response was received from GBC.

The County Council has noted the response from GBC dated 29th February 2024 on the Pre-Submission Draft of the Kent Minerals and Waste Local Plan 2024-39, specifically with respect to Policy DM 3. Legislation and planning practice guidance related to the implementation of statutory requirements for Biodiversity Net Gain were published after the Plan was published at the Regulation 19 stage. The Local Plan was accurate at the time of drafting.

Maidstone Borough Council (MBC). An updated SoCG, dated July 2024, has been agreed with the Cabinet Member for Planning Policy and Management on behalf of MBC. A copy of the SoCG is attached and will be uploaded to the examination website.

Sevenoaks District Council (SDC). An updated SoCG has been agreed with SDC and a copy of this is attached and will be uploaded to the examination website.

Thanet District Council were contacted in December 2023 and invited to comment on whether they believed that a SoCG was needed, as we have previously not concluded a SoCG with them on minerals and waste matters. Thanet District Council replied and confirmed their agreement with the view that a SoCG was not needed.

Tunbridge Wells Borough Council (TWBC). The County Council has held ongoing discussions with TWBC to update the SoCG that was signed in February 2022. Following positive discussions in July 2024, the parties have agreed to prepare a separate SoCG for the current Local Plan review work. This work is in hand.

Medway Council An updated SoCG has been agreed with Medway Council and a copy of this is attached and will be uploaded to the examination website.

Surrey County Council An updated SoCG has been agreed with Surrey County Council and a copy of this is attached and will be uploaded to the examination website.

- c) ensure that copies of all of the signed SoCG are included within the examination website for completeness. Please also ensure that the SoCG comply with accessibility and data protection standards as necessary.**

The County Council confirms that signed Statements of Common Ground are available on the examination website either as part of the submitted DTC report or in the case of later SoCGs as standalone documents. The Statement of Common Ground with Natural England is also available on the examination website. Documents produced by the County Council comply with accessibility and data protection standards as necessary. Those documents not prepared by the County Council that are non-complaint are listed in the KCC Accessibility Statement.

Discussions are ongoing with Ashford BC and Tunbridge Wells BC. Any future SoCGs that are completed and signed, will be uploaded to the examination website. The attached SoCGs that have been agreed with a number of additional parties since submission are accessibility compliant and will be uploaded to the examination website.

2. Are there any strategic matters relevant to the Plan which would require cooperation with minerals and waste planning authorities in locations further afield than those adjacent to the Kent County boundaries? If so, what engagement has taken place with the relevant authorities?

Engagement has taken place with a number of neighbouring planning authorities, and those further afield. Chapter 4 of the Duty to Cooperate Report (SD03) outlines engagement with the South East Waste Planning Advisory Group (SEWPAG) comprising all waste planning authorities in the South East to assist in the effective planning of sustainable waste management (paragraph 4.2). Membership is listed in paragraph 4.2 of the Report. As noted in paragraph 4.4, the County Council is signatory to a Statement of Common Ground between Waste Planning Authority members of SEWPAG concerning Strategic Policies for Waste Management (March 2020). Details are shown in Appendix 7 of the Report.

Paragraph 4.5 of the Report also outlines the role of the South East England Aggregates Working Party (SEEAWP), with membership listed in paragraph 4.6. This is a technical working group, a key activity of the group, is to coordinate annual aggregate mineral monitoring across the South East and reviewing the Local

Aggregate Assessments (LAAs) produced by the Minerals Planning Authorities. These then inform the Annual Monitoring Report (AMR) for aggregate sales and reserves that in turn inform the Government's national planning policy requirements. Individual Mineral Planning Authority's LAAs are discussed by the group which aids understanding of how aggregate trends are changing in the South East.

The County Council has worked with the Mineral Planning Authority members of SEEAWP to agree a position statement on soft sand. The Authorities are listed in the Position Statement. The purpose of the Soft Sand Position Statement 2023 is to provide an agreed source of evidence and current policy on the issue of soft sand supply in the South East. The Position Statement underpins effective cooperation and collaboration between the Minerals Planning Authorities of the South East of England in addressing the strategic cross-boundary matter of soft sand supply. The Soft Sand Position Statement 2023 is attached as Appendix 8 of the Report. A separate SoCG on Soft Sand between Kent County Council, West Sussex County Council, East Sussex County Council, Brighton & Hove City Council, South Downs National Park Authority and Maidstone Borough Council was prepared in July 2022, and this is attached as Appendix 9 of the Report.

As set out in paragraph 4.14 of the Report, Essex County Council, West Sussex County Council and East Sussex County Council were individually consulted on the need for a SoCG with KCC and each did not indicate that this was necessary.

Sustainability Appraisal (SA)

3. Could the Council please confirm that there were no Regulation 19 consultation responses received to the SA?

The County Council received two representations on the Sustainability Appraisal (SA) in response to the Regulation 19 consultation. These are available to view in submission document SD16 'Summary of Regulation 19 Representations - May 2024' on page 29. The representations on the SA include a comment from the Environment Agency in that the concept of 'sustainable remediation' which relates to the management of contaminated land and is considered by the 'Sustainable Remediation Forum', could perhaps be referenced in the SA, and a representation from Natural England confirming that they have no comments on the SA.

4. Has the SA process been genuinely iterative and carried out in step with the stages of plan preparation?

Yes, the County Council has undertaken a Sustainability Appraisal (SA) at each stage of the Local Plan process which has, throughout the process, informed the preparation and shaped the evolution of the submission version of the Kent Minerals and Waste Local Plan 2024-39. Since the review of the Kent Minerals and Waste Local Plan began in 2021, there have been several previous iterations of the SA that have been available for viewing and comment at each public consultation stage through the Local Plan preparation process. These have been, and still are available to view on the County Council's consultation portal ([Minerals and Waste | Let's talk Kent](#)), and hard copies were also available to view at the main County Council office for the duration of the consultations. The table below sets out details of

the previous iterations of the SAs that have informed the Local Plan preparation that have been available throughout the stages of the Local Plan preparation process:

Public Consultation Stage	SA Title	Consultation Portal Webpage Link
<p><u>First Regulation 18 public consultation - 18 December 2021 to 9 February 2022</u> <i>Available as part of the first Regulation 18 public consultation on the 'Kent Minerals and Waste Local Plan 2013-30 Review' which took place from 18 December 2021 to 9 February 2022</i></p>	<p><u>Sustainability Appraisal Scoping Report of Updates to the Kent Minerals and Waste Local Plan 2013-30 in light of the Five Year Review - October 2021</u></p>	<p><u>Kent Minerals and Waste Local Plan 2013-30 Review Let's talk Kent</u></p>
<p><u>Second Regulation 18 public consultation - 24 October 2022 to 5 December 2022</u> <i>Available as part of the second Regulation 18 public consultation on the 'Kent Minerals and Waste Local Plan 2023-38' which took place from 24 October 2022 to 5 December 2022</i></p>	<p><u>Sustainability Appraisal Report - Regulation 18 - Updates to the Kent Minerals and Waste Local Plan 2013-30 in light of the Five Year Review - August 2022</u></p>	<p><u>Kent Minerals and Waste Local Plan 2023-38 Let's talk Kent</u></p>
	<p><u>Sustainability Appraisal Report - Regulation 18 Non-Technical Summary - Updates to the Kent Minerals and Waste Local Plan 2013-30 in light of the Five Year Review - August 2022</u></p>	<p><u>Kent Minerals and Waste Local Plan 2023-38 Let's talk Kent</u></p>
<p><u>Third Regulation 18 public consultation - 13 June 2023 to 25 July 2023</u> <i>Available as part of the third Regulation 18 public consultation on the 'Kent Minerals and Waste Local Plan 2024-2039 - Further proposed changes' which took place from 13 June 2023 to 25 July 2023</i></p>	<p><u>Sustainability Appraisal Report - Regulation 18 - Updates to the Kent Minerals and Waste Local Plan 2013-30 in light of the Five Year Review - May 2023</u></p>	<p><u>Kent Minerals and Waste Local Plan 2024-2039 - Further proposed changes Let's talk Kent</u></p>
	<p><u>Sustainability Appraisal Report - Regulation 18 Non-Technical Summary - Updates to the Kent Minerals and Waste Local Plan 2013-30 in light of the Five Year Review - May 2023</u></p>	<p><u>Kent Minerals and Waste Local Plan 2024-2039 - Further proposed changes Let's talk Kent</u></p>

<p><u>Regulation 19 public consultation - 17 January 2024 to 29 February 2024</u> Available as part of the Regulation 19 public consultation on the 'Pre-Submission Draft of the Kent Minerals and Waste Local Plan 2024-39' which took place from 17 January 2024 to 29 February 2024 NB: This is the version of the SA that was submitted as a submission document for Independent Examination</p>	<p><u>Sustainability Appraisal Report of the Kent Minerals and Waste Local Plan 2024-39 - Regulation 19 Consultation - November 2023</u> <u>Sustainability Appraisal Report Non-Technical Summary - Kent Minerals and Waste Local Plan 2024-39 - Regulation 19 Consultation - November 2023</u></p>	<p><u>Pre-Submission Draft of the Kent Minerals and Waste Local Plan 2024-39 Let's talk Kent</u></p>
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Please confirm whether these documents should be uploaded to the examination webpage as further background evidence to show that the SA process has been genuinely iterative and carried out in step with the stages of the plan preparation.

5. Is there clear evidence to indicate why, having considered reasonable alternatives, the Plan's strategy is an appropriate one?

Yes. The reasonable alternatives identified and appraised by the SA are as follows:

- Option A: To allocate land for waste facilities as envisaged in the KMWLP adopted in 2016;
- Option B: Do not strengthen groundwater protection in policy DM 10;
- Option C: Retain policy CSW 5.

Justification of the Plan's strategy is considered against each of these reasonable alternatives in turn as follows:

Option A: To allocate land for waste facilities as envisaged in the KMWLP adopted in 2016

The allocation of land in a Local Plan is intended to provide additional certainty that development required to meet the objectives of the Plan, will come forward over the Plan period. In the case of the development of new waste management facilities, the need for these is considered in particular relation to their ability to help ensure that targets relating to ensuring that waste will be managed in accordance with the waste hierarchy (e.g. those relating to waste recycling) will be met over the Plan period. By comparing the required quantum of waste management capacity to meet Plan targets with the existing waste management capacity in the Plan area it is possible to

assess the extent to which new waste management capacity is needed. This approach is consistent with Planning Practice Guidance (PPG) that states:

The Local Plan relating to waste should identify sufficient opportunities to meet the identified needs of an area for the management of waste, aiming to drive waste management up the Waste Hierarchy.

PPG Ref: Paragraph: 011 Reference ID: 28-011-20141016

The Waste Needs Assessment¹ prepared to support the update of the Kent Minerals and Waste Local Plan identified that there is sufficient existing capacity in Kent to meet requirements for waste management capacity (specifically for recycling and other recovery) in Kent over the Plan period. On this basis the Plan does not need to identify land to provide certainty that such additional capacity would be developed. Proposals for new capacity would be, and have been, assessed in accordance with the relevant policies of the Plan and in particular Policy CSW6 that identifies the type of land that is more likely to be suitable for waste management.

The allocation of land for waste management may lead to excessive capacity for the management of waste being developed in Kent which would have the following adverse consequences:

- Other forms of development needed in Kent will have reduced opportunities for identifying suitable land as allocated land will be 'sterilised' from development for non-waste management land uses;
- Efforts to reduce the amount of waste being produced in the first place may be disincentivised when there is plentiful capacity to manage the waste that is produced, indeed excessive capacity may, via competition, result in the costs of waste management reducing thus lessening financial incentives to reduce waste production;
- In light of the above, waste from other areas may be drawn into Kent for management which may result in impacts arising from waste being transported greater distances.

It should be noted that that since the Kent Minerals and Waste Local Plan 2013-30 was originally adopted, proposals for new waste facilities have been submitted and, in some cases, planning consent has been issued. Monitoring of the Plan has not indicated that the absence of a Waste Sites Plan has hindered the development of facilities needed to ensure that waste can be managed in accordance with the objectives of the Plan.

Option B: Do not strengthen groundwater protection in policy DM 10

The Plan's strategy for the protection of groundwater as set out in the changes to Policy DM10 is intended to ensure that groundwater aquifers which may be required for abstraction in future are protected from contamination. This strategy is especially

¹ See examination documents EB04, EB05, EB07/1 and EB09.

appropriate in Kent in light of the precarious status of waste availability in Kent as shown in Figure 21 of the KMWLP.

The Environment Agency supported the proposed change to the policy as follows:

We agree with proposed additions to the Policy wording. Aquifers are essential waterbodies in Kent and the impact from dewatering at mineral sites can have a huge impact on receiving waterbodies, especially groundwater. We agree that hydrogeological connections must be assessed for minerals or waste sites and for applications to include hydrogeological and hydrological assessments as required.

The SA (SD05) notes the impacts associated with not making the proposed changes to the policy as follows:

By not strengthening the protection of groundwater, the policy would fail to protect groundwater resources outside currently designated Source Protection Zones, and particularly aquifers that could be used for abstraction in the future. The policy would still require protection of any waterbody, although would not specifically mention aquifers. The policy would not require protection of waterbodies hydrogeologically connected to the site, nor would it require hydrological assessment of the effects of development on the water environment, resulting in more limited protection and assessment than would be the case with the policy as proposed to be amended. Adverse impacts on biodiversity from the higher risk of groundwater pollution are possible, and sustainable economic growth could be adversely affected in the medium to long term, as the risks of groundwater pollution will be higher and water for abstraction is likely to require additional treatment before use, leading to higher treatment costs and higher cost of water supply. The significance of effects is dependent on where sites are located in relation to sensitive water bodies.

Option C: Retain policy CSW 5

The justification for the deletion of Policy CSW5 as an appropriate strategy is set out in section 3.0 of the Draft Kent Minerals and Waste Local Plan 2024-39 Further Proposed Changes - Consultation Document Regulation 18 Draft, May 2023 (ED5). This includes the following:

3.3 The KMWLP promotes the management of waste in accordance with the waste hierarchy and, while disposal is not ruled out, retaining a specific allocation may no longer be consistent with the waste hierarchy. This is because an extension to the existing landfill may no longer be needed as more preferred options for managing hazardous (flue) dust ash residues further up the waste hierarchy are now viable and available.

3.4 An assessment of the future need for capacity in Kent capable of managing hazardous (flue) dust ash has been prepared and this demonstrates that significant quantities of this waste are now being managed by means other than landfill.

3.5 It is important to note that deletion of the allocation at Norwood Quarry would not preclude development of additional landfill capacity to manage hazardous (flue) dust

ash residues from Energy from Waste plants in future. Such development could come forward if a need was demonstrated and the location for the development was found to be suitable when considered against the policies of the Development Plan (which includes the Kent Minerals and Waste Local Plan) and national planning policy.

The SA notes the impacts associated with not deleting Policy CSW5 as follows:

Retaining the site allocation could hinder the development of alternative treatment solutions for fly ash, which would otherwise provide a more sustainable way of managing this by-product of incineration and could create economic opportunities from the waste stream. However, it is also possible that alternative uses will be developed and implemented regardless of the availability of landfill capacity.

Retaining the policy may promote the import of air pollution control residues from a larger catchment area than Kent. This would encourage transport of waste with associated increases in impacts including emissions to air, demand for transport infrastructure, noise and climate change impacts from increased greenhouse gas emissions. There may be impacts on congestion on the local road network from traffic accessing the site, particularly in combination with other developments in the local area.

By facilitating landfill of hazardous waste, the policy would allow management of waste at the bottom of the waste hierarchy, against sustainable waste management principles. By providing for landfill capacity for hazardous waste arising from Energy from Waste plants, the policy may facilitate the management of waste removed some distance from its place of production, although national policy recognises that there may be a need for some types of facility which accept waste from other areas.

6. Following the Supreme Court decision in R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents), does the Council consider that this has any implications for the SA?

The Council does not consider that this Supreme Court decision has any implications for the SA. The Supreme Court decision relates specifically to an Environmental Impact Assessment which was submitted to support an application for a specific development proposal relating to oil extraction in Surrey and not to a Sustainability Appraisal (SA) of a Local Plan. Requirements for Environmental Impact Assessment are set out in the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 whereas SA is required by Section 19 of the Planning and Compulsory Purchase Act 2004 with requirements for Strategic Environmental Assessment (incorporated within SA) set out in The Environmental Assessment of Plans and Programmes Regulations 2004.

Other Matters

7. To what extent does the development plan contain policies designed to secure that the development and use of land in the Plan area contributes to the mitigation of, and adaptation to, climate change?

Updates to the Plan have been made to reflect the Kent and Medway Energy and Low Emissions Strategy (BD08) that was adopted by the Council in 2020 after the current adopted KMWLP was adopted in 2016. The Strategy sets out how Kent County Council, in partnership with Medway Council, and Kent district and borough councils, will respond to the UK climate emergency and drive clean, resilient economic recovery across the county. Priorities set out in the document include ensuring that climate change and circular economy principles are integrated into Local Plans, including environmental considerations, reducing carbon emissions, and ensuring management of resource sustainably. The Strategy includes the following statement:

'Principles of Clean Growth (growing our economy whilst reducing greenhouse gas emissions), must be factored into all planning and development policies and decisions, whilst not becoming a barrier to new development.'

The Strategy also expects climate change to be fully integrated into Local Plans. Mechanisms to address the causes and impacts of climate change, in respect of minerals and waste related development in Kent, are therefore embedded throughout the Plan. Strategic Objective 2 (SO2) is specifically intended to address this issue and states:

Ensure minerals and waste developments contribute towards the minimisation of, and adaptation to, the effects of climate change. This includes helping to shape places to secure radical reductions in greenhouse gas emissions and supporting the delivery of renewable and low carbon energy and associated infrastructure.

The monitoring schedule in Section 8 of the Plan shows how the Strategic Objectives link to the different policies of the Plan and how objective SO2 is implemented by the following policies:

- CSM 1 & CSW 1: Sustainable Development
- CSM 6: Safeguarded Wharves and Rail Depots
- CSM 7: Safeguarding Other Mineral Plant Infrastructure
- CSM 8: Secondary and Recycled Aggregates
- CSM 10: Oil, Gas and Unconventional Hydrocarbons
- CSM 12: Sustainable Transport of Minerals
- CSW 2: Waste Hierarchy
- CSW 3: Waste Reduction
- CSW 4: Strategy for Waste Management Capacity
- CSW 6: Location of Built Waste Management Facilities
- CSW 7: Waste Management for Non-Hazardous Waste
- CSW 8: Other Recovery Facilities for Non-hazardous Waste
- CSW 10: Development at Closed Landfill Sites

- CSW 13: Remediation of Brownfield Land
- CSW 17: Nuclear Waste Treatment and Storage at Dungeness
- DM 1: Sustainable Design
- DM 8: Safeguarding Minerals Management, Transportation & Waste Management Facilities

The following additional policies make explicit reference to how the use of land in the Plan area should be managed to mitigate and adapt to climate change:

- Policy DM 12 Cumulative Impact
- Policy DM 19: Restoration, Aftercare and After-use

8. Is it sufficiently clear in the Local Plan what, if any, capacity gaps for each waste stream exist and how these will be addressed?

Yes. Policy CSW 4 sets out the Council's Strategy for Provision of Waste Management Capacity. The foundation of the strategy is the continued achievement of net self-sufficiency within Kent and the management of waste close to its source as these are key Strategic Objectives of the Kent MWLP (See Strategic Objectives 12, and 14).

The Waste Needs Assessment (EB04 to EB09) shows that Kent currently achieves net self-sufficiency in waste management capacity for all waste streams and is forecast to so over the Plan period. This means that the capacity of the waste management facilities (excluding transfer) in Kent is sufficient to manage the equivalent quantity of waste to that is predicted to arise in Kent in the manner proposed by the Plan (as set out in the targets included in Policy CSW4).