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**Your ref:**  
**Email:** Poppy.cornish@quod.com  
**Date:** 28 February 2024

Minerals and Waste Planning Policy Team  
Kent County Council  
1<sup>st</sup> Floor,  
Invicta House,  
Maidstone,  
Kent,  
ME14 1XX

Dear Sir/ Madam,

## **Kent Minerals and Waste Local Plan 2024-39 Regulation 19 Consultation Document**

### [Introduction and Context](#)

Quod is instructed by our client, Otterpool Park LLP, to submit representations to the Kent Minerals and Waste Local Plan (KMWLP) Regulation 19 consultation which runs until 29 February 2024.

Otterpool Park LLP are seeking to bring forward development on the site identified as 'Otterpool Park' where the development of a new garden settlement is supported as per Policy SS6 of the Folkestone & Hythe District Council (FHDC) Core Strategy Review, adopted in 2022.

On 4 April 2023, FHDC Planning Committee resolved to grant outline planning consent for a residential led mixed use development of up to 8,500 homes, along with retail, commercial, education, health, community uses and associated infrastructure at Otterpool Park (ref: Y/19/0257/FH). Work is currently progressing to agree the associated S106 legal agreement.

Kent's latest Strategic Delivery Plan (2020-2023, page 9) states that "Kent County Council (KCC) will work collaboratively with the relevant district Council as the local planning authority, landowners, and Homes England, as the Government's 'housing accelerator' in order to positively influence the delivery" of Otterpool Park. These representations are prepared with the delivery of Otterpool Park in mind.

Kent County outlined their support for the principle of the delivery of a garden settlement at Otterpool Park within their consultation response issued on 17<sup>th</sup> March 2023. The County Council confirmed that:

*"The County Council has provided support for the positively planned delivery of a new garden settlement at Otterpool Park supported by the timely provision of infrastructure in a truly green setting".*

## Representations

Quod, on behalf of Otterpool Park LLP, have previously submitted representations to the KMWLP consultations. Our previous representations submitted to the County Council in February and December 2022 and July 2023 are still of relevance and are appended to this letter (Appendix 1).

We request the following amendments are made:

### Preparation of the local plan:

1. The KMWLP should be updated to make clear how KCC intends to achieve the waste targets set out in Policy CSW 4 i.e. through which sites will waste facilities be located on. It is noted from page 91 of the Consultation Statement published at the same time as the Regulation 19 consultation, that KCC consider there is sufficient capacity through consented facilities to meet current and future waste arisings. Paragraph 6.3.6 of the draft KMWLP however states "...the WDA has identified a pressing need for the development of new waste transfer facilities to serve those particular areas where collected waste can be bulked up for onward management and is working with the local WCAs to secure this. Over the plan period it is possible that significant development elsewhere in Kent may require the provision of additional waste management facilities."
2. KCC should be clear at the plan making stage what waste transfer facilities are required, taking into account already delivered facilities within the county. KCC should then undertake a call for sites consultation, an assessment of the most suitable sites and carry out the process of allocating sites through the local plan to provide the necessary waste transfer facilities. A waste transfer facility would not be best placed in the location of the Permitted Waste Facility at Otterpool Park (application reference SH/08/124).
3. KCC should not rely on waste facilities providing capacity if they have not been delivered within five years of being granted consent and KCC should consider bringing forward alternative or additional allocations if it considers that is necessary (for example, given the doubts about the prospects of the Permitted Waste Facility (SH/08/124) coming forward, KCC should not be relying on it to provide capacity for the authority going forward). It is noted from Page 91 of the Consultation Statement published at the same time as the Regulation 19 consultation that KCC is concerned that if consented waste management capacity that has been lawfully implemented is not considered as part of the Council's waste treatment capacity, it could be subject to legal challenge. Our below suggested amendments however make clear the specific circumstances whereby sites with planning permission that are not operational within 5 years of planning consent should no longer be factored into the KCC's waste capacity. Relying on capacity of sites which are no longer coming forward would be unsound.

### Draft CSW 16 amendments:

4. For the plan to be found sound, draft Policy CSW 16 should be amended to reflect the need to safeguard waste management facilities that do provide waste capacity and not just theoretical capacity. We suggest it should be amended to state:  
  
*"capacity at sites with permanent planning permission for waste management **and that are operational within 5 years of planning consent being granted**, is safeguarded from being developed for non-waste management uses"* (or we would be content for it to say 10 years rather than 5 years if KCC considered that to be more appropriate).
5. For the same reason, the definition in footnote 114 of draft Policy CSW 16 should be amended to state:

*“Existing facilities” are taken as those which have permanent planning permission for minerals and waste uses and that are operational within 5 years of the planning consent being granted* (or we would be content for it to say 10 years rather than 5 years if KCC considered that to be more appropriate).

6. It is not appropriate to prevent non-waste uses on sites in perpetuity where waste facilities have been granted permission previously and reference should be made in Policy CSW 16 to Policy DM8 which provides criteria for when non-waste development could come forward.

Draft Policy DM 8 amendments:

7. Where proposals for non-waste uses come forward which make a significant housing contribution and provide a policy compliant level of affordable housing, the benefits should outweigh a presumption of continuing to safeguard a site for waste provision which has not yet come forward within 5 years of consent being granted – although there are some exemption criteria already listed in the policy, this should be stated as a specific example of exemption in the policy wording.

8. We suggest the following additional wording is inserted into Policy DM8 (following the list of seven criteria):

*“Safeguarded minerals management facilities, transportation or waste management facilities which are subject to a planning permission facilitating their delivery no longer need to be protected for the purposes of this policy where the facility the subject of the planning permission has not been completed (for the purposes of occupation and operation) within 5 years of the date of the planning permission.”*

9. We suggest additional wording is inserted into Policy DM8 (beneath the list of seven criteria) to reflect the importance of exceptional cases such as the Proposed Development:

*“It is recognised that there are exceptional cases where the benefits of delivering a particular development are so great. Therefore, in the case of plan-led comprehensive new settlements, this policy will not apply.”*

Draft Policy DM 7 Amendments

10. Where proposals for non-mineral developments come forward which make a significant housing contribution and provide a policy compliant level of affordable housing, the benefits should outweigh a presumption of continuing to safeguard a site for mineral extraction which has not yet come forward – this should be stated as a specific example of exemption in the policy wording. Delivery of housing to meet the trajectory envisaged in the recently adopted FHDC Core Strategy Review (2022) should be taken into account. Where there is conflict between policies in a plan which is adopted after another document in the development plan, the more recent policy takes precedent. In this instance, the more recent document is the FHDC Core Strategy Review (2022), which designates the site as a new garden settlement.

11. We suggest that further additional wording could be inserted into Policy DM 7 (beneath the list of seven criteria) to reflect the importance of exceptional cases such as the Proposed Development:

*“It is recognised that there are exceptional cases where the benefits of delivering a particular development are so great. Therefore, in the case of plan-led comprehensive new settlements, this policy will not apply.”*

Conclusion

Emerging planning policy should not prejudice the ability for FHDC and KCC's strategic objectives from being met and the Proposed Development at Otterpool Park from being properly delivered, which would in turn deliver a significant number of benefits. The first priority in KCC's latest Strategic Delivery Plan (2020-2023) is for Kent to be an ambitious and successful county, with high quality jobs, skilled workers, enterprising businesses and thriving urban and rural areas. To achieve this the Plan states on page 9 that KCC will work collaboratively with the relevant district councils and landowners in order to positively influence the delivery of the garden communities across Kent – including Otterpool Park. The emerging KMWLP should be revised so that this priority can be achieved.

Your Sincerely,



Poppy Cornish  
Associate Director

cc. Tom Vernon, Quod  
cc. Julia Wallace, Otterpool Park LLP  
cc. Dave Shore, Otterpool Park LLP

## Appendix 1

## **Kent County Council - Draft Waste and Minerals Plan (Regulation 18 Consultation)**

### **Representations Submitted on Behalf of Otterpool Park LLP**

#### **Introduction and Context**

1. We are instructed by our client, Otterpool Park LLP (the “LLP”), to make representations to Kent County Council’s (“KCC”) Regulation 18 consultation documents in respect of its proposed update to the Minerals and Waste Local Plan, last updated in September 2020 through the Early Partial Review (“KMWLP”).
2. In February 2019 the LLP submitted an outline planning application for a landscape-led garden town development known as Otterpool Park (the “Proposed Development”) to Folkestone and Hythe District Council (“FHDC”). The application has application ref. Y/19/0257/FH.
3. Otterpool Park is allocated for development in the FHDC Regulation 19 Core Strategy Review (Submission Draft, February 2020, with 2021 Main Modifications) and has been identified as a site of strategic importance, contributing significantly towards meeting the District Council’s identified housing need.
4. The garden community approach which underpins the outline planning application provides an opportunity to create an innovative, resilient and inclusive community to stand the test of time. Planning at this scale provides the opportunity to think holistically about how a place will function, and to understand what mechanisms need to be delivered to help turn a vision underpinned by the Garden City Principles into a flourishing place to live, work and visit.
5. KCC granted planning consent for a permitted waste facility at Otterpool Quarry, Ashford Road, in March 2011 (application reference no. SH/08/124) (the “Permitted Waste Facility”). The planning consent was implemented under the terms of the permission, but only a minimal amount of development was undertaken to secure the permission.
6. The LLP can confirm that the landowner of the Permitted Waste Facility site has no aspiration to complete the consented development and build out the facility.
7. The Proposed Development could, however, result in the loss of the opportunity to build out the Permitted Waste Facility.
8. The KMWLP and the Kent Minerals Sites Plan together control and manage development proposals in the County. Policy DM8 of the KMWLP controls future development in the context of safeguarding minerals management, transportation production and waste management facilities. Policy DM8 confirms that planning permission will only be granted for development that is incompatible with the Permitted Waste Facility at Otterpool Quarry where it can be demonstrated that one of seven criteria can be met.
9. Accordingly, given the nature of the Proposed Development and the relationship with the Permitted Waste Facility, the LLP’s application submission seeks to confirm that the requirements of Policy DM8 of the KMWLP have been met in respect of the Permitted Waste Facility.
10. The LLP considers Policy DM8, as its currently stands, to be too restrictive, particularly in the specific context of the Proposed Development and the Permitted Waste Facility.
11. Emerging planning policy and guidance should not prejudice the ability for FHDC’s strategic objectives from being met and the Proposed Development from being properly delivered, which would in turn deliver a significant number of regenerative benefits. The Regulation 18 consultation update to the KMWLP proposes no change to Policy DM8, save for a very minor amendment to recognise that the KCC Safeguarding Supplementary Planning Document is now

adopted. Therefore, if adopted as proposed, the Regulation 18 consultation update to the KMWLP would not address the restrictive nature of Policy DM8.

12. Our representations on the Regulation 18 consultation document are made in this context and are set out below.

### Policy DM8

13. Policy DM8 as currently written in the KMWLP states that:

*“Planning permission will only be granted for development that is incompatible with safeguarded minerals management, transportation or waste management facilities, where it is demonstrated that either:...”*

14. Policy DM8 then provides seven criteria for applicants to seek to demonstrate their proposals against.

15. However, it is considered that the hurdles that an applicant is required to overcome to meet the criteria are, in some circumstances, too great and, importantly, do not reflect site-specific conditions about a particular safeguarded facility and its relationship with a potential development which may impact its delivery.

16. For instance, the current Policy DM8 does not consider a scenario where a safeguarded minerals management, transportation or waste management facility has no (or extremely limited) prospect of being delivered. This includes, for instance, permitted facilities which are either extant but yet to be implemented, or where implementation has taken place but it will not be completed (such as the Permitted Waste Facility). As confirmed above, the landowner of the Permitted Waste Facility site has no aspiration to complete the consented development and build out the facility.

17. In addition, there are elements of existing Policy DM8 which enable a subjective view to be adopted. For instance, Criteria 6 states that planning permission will only be granted for development that is incompatible where *“material considerations indicate that the need for development overrides the presumption for safeguarding”*. This wording, in our view, allows the decision-taker (KCC in this case) to push back on a proposal for a development and not accept the ‘material considerations’ being advanced by an applicant, regardless of how significant the material considerations are and the significance of the scheme that they relate to.

18. Policy DM8 currently provides very little opportunity for an applicant of an ‘incompatible’ development to align themselves to specific planning circumstances that could be met to expressly justify the loss of a safeguarded facility. Planning and development policies throughout the UK often include time-based and evidence-based tests which, if met, allow an existing use or operation to be replaced by another use or operation (for example, where suitable marketing evidence of at least 2 years demonstrates that demand for an existing employment use is no longer present and that use can be changed to another).

19. Introduction of such wording would, in our view, represent a more pragmatic approach and would enable safeguarded sites to be protected where necessary, but recognise that in some instances it is not appropriate to continue to plan for their delivery.

20. We therefore suggest that the following wording is inserted into Policy DM8 (following the list of seven criteria):

*“Safeguarded minerals management facilities, transportation or waste management facilities which are subject to a planning permission facilitating their delivery no longer need to be protected for the purposes of this policy where the facility the subject of the planning permission has not been completed (for the purposes of occupation and operation) within 5 years of the date of the planning permission.”*

21. We are aware that KCC will not wish to set an unhelpful precedent which could lead to a raft of proposed developments being able to overcome a minerals management, transportation or

waste management safeguarding. The key to any change to Policy DM8 will therefore be in the ability for each case to be assessed on its own merits and for KCC to take a considered and proportionate view when balancing the need to maintain the safeguarded facility versus the need for specific development to come forward as required to facilitate regeneration and to deliver benefits. The Proposed Development, for instance, provides a once in a generation opportunity to create an innovative, resilient and inclusive community to stand the test of time and to deliver a vision which is underpinned by the Garden City Principles. Importantly, the Proposed Development is allocated for development and is identified as a site of strategic importance, contributing significantly towards meeting the District Council's identified housing need. In short, the planning case for the Proposed Development to be properly delivered is significant.

22. We therefore suggest that further additional wording is inserted into Policy DM8 (beneath the list of seven criteria) to reflect the importance of exceptional cases such as the Proposed Development:

*"It is recognised that there are exceptional cases where the benefits of delivering a particular development are so great. Therefore, in the case of plan-led comprehensive new settlements, this policy will not apply."*

23. It is considered that if this new wording is introduced into Policy DM8 it will not prevent KCC from managing safeguarded sites across the County. Instead, it will allow decisions to be made on a case-by-case basis to facilitate the delivery of new development where it is genuinely required and which represents the optimal masterplan approach for a particular area.

**End**



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**Date:** 02 December 2022



Minerals and Waste Planning Policy Team  
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Invicta House,  
Maidstone,  
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ME14 1XX

Dear Sir/ Madam,

## **Kent Minerals and Waste Local Plan 2023-38 Regulation 18 Consultation Document**

### [Introduction and Context](#)

Quod is instructed by our client, Otterpool Park LLP, to submit representations to the Kent Minerals and Waste Local Plan (KMWLP) Regulation 18 consultation which runs from 24<sup>th</sup> October – 5<sup>th</sup> December 2022.

Otterpool Park LLP are seeking to bring forward development on the site identified as 'Otterpool Park' where the development of a new garden settlement is supported as per Policy SS6 of the Folkestone & Hythe District Council (FHDC) Core Strategy Review, adopted in 2022. The site is currently the subject of a live planning application (ref: Y/19/0257/FH) proposing to deliver a residential led mixed use development of up to 8,500 homes, along with retail, commercial, education, health, community uses and associated infrastructure (the 'Proposed Development').

An application for outline planning consent for the Proposed Development was submitted by Quod, on behalf of Otterpool Park LLP, in February 2019. Subsequently, revisions and updated documents have been submitted to address comments from consultees and optimise the deliverability of the application.

Kent's Strategic Delivery Plan (2020-2023, page 9) states that "Kent County Council (KCC) will work collaboratively with the relevant district Council as the local planning authority, landowners, and Homes England, as the Government's 'housing accelerator' in order to positively influence the delivery" of Otterpool Park. These representations are prepared with the delivery of Otterpool Park in mind.

### [Otterpool Quarry Permitted Waste Facility](#)

KCC granted planning consent for a permitted waste facility at Otterpool Quarry, Ashford Road, in March 2011 (application reference no. SH/08/124) (the 'Permitted Waste Facility'). It is understood by KCC that the planning consent has been implemented under the terms of the permission. Only a



minimal amount of development has however taken place to implement the consent (provision of kerbs at the entrance to the site). Since then, there has been no work undertaken to deliver the facility.

There have been five applications on the site submitted since the Permitted Waste Facility consent was granted in 2011:

- Y16/0066/SH - Advertisement consent for a freestanding aluminium composite panel sign, located along the highway verge, directing lorries to the entrance to the lorry park and two placard/banners displayed on the fencing and entrance gate to the site – not determined.
- Y16/0068/SH - Retrospective planning application for change of use of a former quarry site to a temporary secure 24-hour lorry park with associated facilities for a period of 24 months – refused 19 May 2017.
- Y17/1012/SH – application for change of use from a former quarry site to a temporary use for the storage of containers, installation of additional hardstanding for turning-head and the storage of materials associated with the Channel – withdrawn 25 September 2017.
- Y16/0067/SH - Advertisement consent for two road direction signs located on the screen to the front of the site –approved 2 October 2020.
- 21/2155/FH – application for temporary planning permission for up to 5 years for parking and stationing of 24no HGVs and 10no vehicle parking, with temporary stationing of ancillary facilities – not yet determined.

The site is currently used for lorry parking and has been since at least 2015 (acknowledged in application ref Y16/0068/SH). The site is not operational as a waste facility and the landowner of the site has no aspiration to build out the Permitted Waste Facility. Please see appended letter from the landowner which confirms this is the case (Appendix 1).

The Permitted Waste Facility is located within the boundary of Otterpool Park. The Proposed Development as now submitted, identifies two built development options in the context of the Permitted Waste Facility. The preferred option shows Otterpool Park development in the location of the Permitted Waste Facility, whilst the proposed alternative option incorporates measures to accommodate the Permitted Waste Facility alongside the delivery of the new garden settlement.

It should be noted that the adopted Core Strategy Review (2022) does not contemplate the co-location of the Permitted Waste Facility within the SS6 Otterpool Park allocation. There are no policies within the document which require the provision of a waste facility. Within paragraph 4.1.93 of Core Strategy Review (2022) it discusses the Permitted Waste Facility but anticipates that there is a scenario where the Permitted Waste Facility is not delivered. The Permitted Waste Facility is not allocated as a waste site in the adopted KMWLP.

Our representations on the Regulation 18 consultation document are made in this context and are set out below.



### Preparation of the KMWLP:

The National Planning Policy for Waste (2014) confirms that waste plans should be prepared using a proportionate evidence base, including ensuring that the need for waste management facilities is considered alongside other spatial planning concerns, such as housing and transport (page 3). As such, the draft KMWLP when seeking to plan for waste provision should take account of spatial allocations in other plans, such as the FHDC Core Strategy Review (2022).

The Local Plan relating to waste should identify sufficient opportunities to meet the identified needs of its area for the management of waste, aiming to drive waste management up the Waste Hierarchy. It should ensure that suitable sites and areas for the provision of waste management facilities are identified in appropriate locations (NPPG Paragraph: 011 Reference ID: 28-011-20141016). Draft Policy CSW 4 of the KMWLP sets out targets for recycling, composting, landfill and other recovery but the plan itself is not clear on how those targets are going to be achieved.

Paragraph 6.3.6 of the draft KMWLP states “the WDA has identified a pressing need for the development of new waste transfer facilities to serve those particular areas where collected waste can be bulked up for onward management and is working with the local WCAs to secure this” but KCC should be clear in the KMWLP on what this need is and then undertake the process of allocating a site(s) to provide these facilities.

The Permitted Waste Facility consent grants permission for materials recycling and an anaerobic digestion plant so safeguarding the site would not help meet the pressing need for waste transfer facilities as identified in paragraph 6.3.6 of the draft KMWLP. A call for sites consultation should be undertaken followed by an assessment of the most suitable sites to provide waste transfer facilities. A waste transfer facility would not be best placed in the location of the Permitted Waste Facility given its current rural location and distance to other development where waste is created nor suitable within the centre of a proposed new garden settlement given the vision of the place to be created.

If KCC wish to “ensure sufficient capacity exists to maintain a county-wide network for the sustainable management of Kent’s waste” (one of the Strategic Objectives for the KMWLP stated on page 49 of the consultation document) and KCC don’t consider they have sufficient sites to achieve this already, KCC should undertake a call for sites consultation and undertake the process of allocating sites through the local plan to provide the necessary facilities. This is necessary for the plan to be positively prepared, justified and effective.

The NPPG states that “Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities. It is important that waste planning authorities engage and collaborate with local communities in an early and meaningful way when identifying options for managing waste” (Paragraph: 012 Reference ID: 28-012-20141016) but from the draft KMWLP the local community cannot be clear on what site options are identified for managing waste (particularly new waste transfer facilities). It should be noted that there was significant public objection to the



Permitted Waste Facility at the time of the planning application. Furthermore, KCC should consider the new garden settlement at Otterpool Park (allocated within the newly adopted FHDC Core Strategy Review, 2022) within the requirement to reflect the “vision and aspiration of local communities” – the new garden settlement is the primary vision for the local area’s growth and a new waste facility at Otterpool Quarry would be directly at odds with achieving this vision.

Applying the definition of ‘existing facilities’ at footnote 114 of the draft KWMLP, the evidence base to the draft KWMLP should consider the other waste sites in East Kent that have been granted planning consent and they should be factored in when deciding if the Permitted Waste Facility needs to be safeguarded (see Appendix 2 of this letter for a list of waste applications submitted in East Kent since 2009).

The NPPG states that “consideration should be given to why any allocated sites and areas have not been taken up as anticipated. If there are doubts about the prospects of particular land allocations coming forward, and this would damage the planning strategy, consideration will need to be given to bringing forward alternative, or additional, allocations.” (Paragraph: 054 Reference ID: 28-054-20141016). We note that the Permitted Waste Facility is not allocated but the ethos of the guidance is still relevant - KCC should not be relying on it to provide capacity for the authority going forward given the doubts about its prospects of coming forward and KCC should consider bringing forward alternative or additional allocations.

Table A3 in the Kent Waste Needs Assessment 2022 Update, which forms part of the evidence base to this consultation, lists Otterpool Quarry as a site which provides consented Organic Waste Treatment capacity (20,000tpa out of a total of 305,000tpa). Although it is correct to say it is consented, given that it has not been delivered and has not been in the 11 years since it was granted consent, and it is known that the land owner does not intend to build the facility, we cast doubt that it should be counted as a realistic prospect for providing capacity. This doubt should be factored into KCC’s waste need and supply calculations. For a plan to be found there needs to be an evidential basis for safeguarding sites.

#### [Draft Policy CSW 16](#)

Policy CSW 16 of the draft KWMLP states that “*capacity at sites with permanent planning permission for waste management is safeguarded from being developed for non-waste management uses*”.

The draft KWMLP therefore seeks to roll forward sites that have previously been given planning permission for waste facilities as those which should be safeguarded. This results in theoretical capacity being safeguarded (like through the Permitted Waste Facility) rather than genuine real-world capacity. Case law supports that decisions should be made in the real world rather than on theoretical positions. If a site has planning permission for waste facilities, it does not automatically mean that the site provides waste capacity and should be safeguarded. As noted above, Paragraph: 054 Reference



ID: 28-054-20141016 of the NPPG makes clear that if there are doubts about the prospects of sites coming forward consideration should be given to bringing forward alternative or additional allocation if needed rather than relying on them coming forward to achieve the strategy.

Paragraph 7.6.1 of the draft KMWLP states:

*“It is essential to the delivery of this Plan’s minerals and waste strategy that existing facilities<sup>114</sup> used for the management of minerals (including wharves and rail depots) and waste are safeguarded for the future, in order to enable them to continue to be used to produce and transport the minerals needed by society and manage its waste.*

<sup>114</sup> *‘Existing facilities’ are taken as those have permanent planning permission for minerals and waste uses.”*

A key part of the above text is that the facilities which are essential to safeguard for the future are the ones that are “**used** for the management of...waste” (our emphasis).

The Permitted Waste Facility at Otterpool Quarry is not built and is therefore not used for the management of waste, it does not provide any operational capacity or perform any waste function and should not therefore be safeguarded. It has been used for lorry parking since summer 2015 as acknowledged through application reference Y16/0068/SH. This is a clear indication that the need for the Permitted Waste Facility is not there nor is it the intention for the landowner to deliver it. On this basis, it cannot be considered to be used or in use in the manner that the policy intends.

Draft Policy CSW 6 (g) itself states that the location of built waste management facilities should avoid sites on or in proximity to land where alternative development exists/has planning permission or is identified in an adopted Local Plan (such as the Proposed Development through the adopted FHDC Core Strategy Review (2022)).

Paragraph 119 of the National Planning Policy Framework (NPPF) (2021) states that planning policies and decision “should promote an effective use of land in meeting the need for homes and other uses”. If planning permission has been granted for waste uses on a site but despite this, 11 years later it still has not been developed, it would not be an effective use of land to continue safeguarding the site for waste uses and prevent the delivery of new uses which are supported by local policy and offer tangible benefits.

Paragraph 82 of the NPPF (2021) states that planning policies should “be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices...and to enable a rapid response to changes in economic circumstances”. The current wording of CSW 16 is not flexible or respond to changes in economic circumstances as it safeguards sites which are not providing waste capacity.



It is not appropriate to prevent non-waste uses on the site in perpetuity and reference should be made in Policy CSW 16 to Policy DM8 which provides criteria for when non-waste development could come forward.

Paragraph 8 of the National Planning Policy for Waste (2014) states that when determining planning applications for non-waste development, local authorities should, to the extent appropriate to their responsibilities, ensure that “the likely impact of proposed, non-waste related **development on existing waste management facilities, and on sites and areas allocated for waste management**, is acceptable and does not prejudice the implementation of the waste hierarchy and/or the efficient operation of such facilities” (our emphasis). It does not refer to sites which have previously been given planning permission. The KWMLP should therefore focus on ensuring the safeguarding of existing waste management facilities that have been built and allocated sites and areas rather than sites who have previously just been granted planning consent.

Permanent planning permission does not necessarily result in waste capacity. For the plan to be found sound, draft Policy CSW 16 should be amended to reflect the need to safeguard waste management facilities that do provide waste capacity and not ones that provide just theoretical capacity. We suggest it should be amended to state:

*“capacity at sites with permanent planning permission for waste management **and that are operational within 5 years of planning consent being granted**, is safeguarded from being developed for non-waste management uses”* (or we would be content for it to say 10 years rather than 5 years if KCC considered that to be more appropriate).

For the same reason, the definition in footnote 114 of paragraph 7.6.1 should be amended to state:

*“Existing facilities: are taken as those **which have permanent planning permission for minerals and waste uses and that are operational within 5 years of the planning consent being granted**”* (or we would be content for it to say 10 years rather than 5 years if KCC considered that to be more appropriate).

Policy CSW 16 and the supporting text in paragraph 6.16.1 states that a list of waste sites is updated and published each year in the Kent MWLP Annual Monitoring Report (AMR). We do not consider that a clear list is provided in the AMR.

#### [Draft Policy DM 8](#)

Policy DM 8 sets out the circumstances when safeguarded minerals and waste development may be replaced by non-waste and minerals uses.

We consider that Policy DM8 should only apply for waste facilities where there is existing operational capacity which is proposed to be lost through proposals for non-waste uses.



Notwithstanding that we consider that the Permitted Waste Facility should not be safeguarded and therefore this policy should not be applied to Otterpool Park proposals, we consider draft Policy DM 8 is overly restrictive and should be updated to take account of the recently adopted Core Strategy Review (2022), which does not require a waste facility to be provided within the new garden settlement allocation area. Paragraph: 072 Reference ID: 61-072-20190315 states that where there is conflict between policies in a plan which is adopted after another document in the development plan, the more recent policy takes precedent. In this instance, the more recent document is the FHDC Core Strategy Review (2022), which designates the site as a new garden settlement.

It is considered that the hurdles that an applicant is required to overcome to meet the criteria are, in some circumstances, too great and, importantly, do not reflect site-specific conditions about a particular safeguarded facility and its relationship with a potential development which may impact its delivery.

For instance, the current Policy DM8 does not consider a scenario where a safeguarded minerals management, transportation or waste management facility has no (or extremely limited) prospect of being delivered. This includes, for instance, permitted facilities which are either extant but yet to be implemented, or where implementation has taken place but it will not be completed (such as the Permitted Waste Facility). As confirmed above, the landowner of the Permitted Waste Facility site has no aspiration to complete the consented development and build out the facility.

In addition, there are elements of existing Policy DM8 which enable a subjective view to be adopted. For instance, Criteria 6 states that planning permission will only be granted for development that is incompatible where “material considerations indicate that the need for development overrides the presumption for safeguarding”. This wording, in our view, allows the decision-taker (KCC in this case) to resist a proposal for alternative development and not accept the demonstrable ‘material considerations’ that weigh in the determination of planning applications, as required by s38(6) of TCPA 1990, irrespective of their significance.

Policy DM8 as currently drafted is ineffective. There is a demonstrable housing and affordable housing crisis in the local area and nationally. Where proposals for non-waste uses come forward which make a significant housing contribution and provide a policy compliant level of affordable housing the benefits should outweigh a presumption of continuing to safeguard a site for waste provision – this should be stated as a specific example of exemption in the policy wording.

Policy DM8 currently provides very little opportunity for an applicant of an ‘incompatible’ development to align themselves to specific planning circumstances that could be met to expressly justify the loss of a safeguarded facility. Planning and development policies throughout the UK often include time-based and evidence-based tests which, if met, allow an existing use or operation to be replaced by another use or operation (for example, where suitable marketing evidence of at least 2 years demonstrates that demand for an existing employment use is no longer present and that use can be changed to another).



Introduction of such wording would, in our view, represent a more pragmatic approach and would enable safeguarded sites to be protected where necessary, but recognise that in some instances it is not appropriate to continue to plan for their delivery.

We therefore suggest that the following wording is inserted into Policy DM8 (following the list of seven criteria):

*“Safeguarded minerals management facilities, transportation or waste management facilities which are subject to a planning permission facilitating their delivery no longer need to be protected for the purposes of this policy where the facility the subject of the planning permission has not been completed (for the purposes of occupation and operation) within 5 years of the date of the planning permission.”*

It would be appropriate for each application for non-waste development on a safeguarded site to be assessed on its own merits and for KCC to take a considered and proportionate view when balancing the need to maintain the safeguarded facility versus the need for specific development to come forward as required to facilitate regeneration and to deliver benefits. The Proposed Development, for instance, provides a once in a generation opportunity to create an innovative, resilient and inclusive community to stand the test of time and to deliver a vision which is underpinned by the Garden City Principles. Importantly, the Proposed Development is allocated for development and is identified as a site of strategic importance, contributing significantly towards meeting the District Council’s identified housing need. In short, the planning case for the Proposed Development to be properly delivered is significant.

We therefore suggest that further additional wording could be inserted into Policy DM8 (beneath the list of seven criteria) to reflect the importance of exceptional cases such as the Proposed Development:

*“It is recognised that there are exceptional cases where the benefits of delivering a particular development are so great. Therefore, in the case of plan-led comprehensive new settlements, this policy will not apply.”*

It is considered that if this new wording is introduced into Policy DM8 it will not prevent KCC from managing safeguarded sites across the County. Instead, it will allow decisions to be made on a case-by-case basis to facilitate the delivery of new development where it is genuinely required and which represents the optimal masterplan approach for a particular area.

These amendments were previously suggested to KCC in February 2022, but KCC considered that “Policy DM8 allows for development to come forward in a number of circumstances and one or more of those may apply in this case” (Consultation Summary Document, 2022). We do not agree that DM 8 allows development to proceed in cases where it should be allowed to.





We understand that DM 8 is intended to operate where proposals will result in a loss of capacity, but this is not the case at Otterpool Park. More flexibility is necessary given the more recent policy position in the adopted Core Strategy Review 2022. For example, Criteria 3 of DM 8 would allow non-waste development to come forward on the site if replacement capacity was provided elsewhere. The Permitted Waste Facility site is however not providing capacity currently so it would not be appropriate to require replacement capacity to be provided in the case where non-waste development is proposed on the site.

These amendments to policy DM8 are particularly important to be taken forward if KCC do not agree to the proposed amendments we have suggested to Policy CSW 16.

### Draft Policy DM 7

Draft Policy DM 7 describes the circumstances in which non-mineral developments that are incompatible with safeguarding a resource would be acceptable.

Where proposals for non-mineral developments come forward which make a significant housing contribution and provide a policy compliant level of affordable housing, the benefits should outweigh a presumption of continuing to safeguard a site for mineral extraction which has not yet come forward – this should be stated as a specific example of exemption in the policy wording. Delivery of housing to meet the trajectory envisaged in the recently adopted FHDC Core Strategy Review (2022) should be taken into account.

We suggest that further additional wording could be inserted into Policy DM 7 (beneath the list of seven criteria) to reflect the importance of exceptional cases such as the Proposed Development:

*“It is recognised that there are exceptional cases where the benefits of delivering a particular development are so great. Therefore, in the case of plan-led comprehensive new settlements, this policy will not apply.”*

### Conclusion

Emerging planning policy should not prejudice the ability for FHDC and KCC’s strategic objectives from being met and the Proposed Development at Otterpool Park from being properly delivered, which would in turn deliver a significant number of benefits. The first priority in KCC’s Strategic Delivery Plan (2020-2023) is for Kent to be an ambitious and successful county, with high quality jobs, skilled workers, enterprising businesses and thriving urban and rural areas. To achieve this the Plan states on page 9 that KCC will work collaboratively with the relevant district councils and landowners in order to positively influence the delivery of the garden communities across Kent – including Otterpool Park. The emerging KMWLP should be revised so that this priority can be achieved.



In summary we request that the following amendments are made:

Preparation of the local plan:

1. The KMWLP should be updated to make clear how KCC intends to achieve the waste targets set out in Policy CSW 4 i.e. through which sites will waste facilities be located on.
2. KCC should be clear what waste transfer facilities are required, taking into account already delivered facilities within the county. KCC should then undertake a call for sites consultation, an assessment of the most suitable sites and carry out the process of allocating sites through the local plan to provide the necessary waste transfer facilities. A waste transfer facility would not be best placed in the location of the Permitted Waste Facility.
3. KCC should not rely on waste facilities providing capacity if they have not been delivered within five years of being granted consent and KCC should consider bringing forward alternative or additional allocations if it considers that is necessary (for example, given the doubts about the prospects of the Permitted Waste Facility coming forward, KCC should not be relying on it to provide capacity for the authority going forward).

Draft CSW 16 amendments:

4. For the plan to be found sound, draft Policy CSW 16 should be amended to reflect the need to safeguard waste management facilities that do provide waste capacity and not just theoretical capacity. We suggest it should be amended to state:  
  
*“capacity at sites with permanent planning permission for waste management **and that are operational within 5 years of planning consent being granted**, is safeguarded from being developed for non-waste management uses”* (or we would be content for it to say 10 years rather than 5 years if KCC considered that to be more appropriate).
5. For the same reason, the definition in footnote 114 of draft Policy CSW 16 should be amended to state:  
  
*“Existing facilities: are taken as those **which** have permanent planning permission for minerals and waste uses **and that are operational within 5 years of the planning consent being granted**”* (or we would be content for it to say 10 years rather than 5 years if KCC considered that to be more appropriate).
6. The Kent MWLP Annual Monitoring Report (AMR) should be updated to include a clear list of waste sites.



7. It is not appropriate to prevent non-waste uses on sites in perpetuity where waste facilities have been granted permission previously and reference should be made in Policy CSW 16 to Policy DM8 which provides criteria for when non-waste development could come forward.

#### Draft Policy DM 8 amendments:

8. Where proposals for non-waste uses come forward which make a significant housing contribution and provide a policy compliant level of affordable housing, the benefits should outweigh a presumption of continuing to safeguard a site for waste provision which has not yet come forward – this should be stated as a specific example of exemption in the policy wording.
9. We suggest additional wording is inserted into Policy DM8 (following the list of seven criteria):

*“Safeguarded minerals management facilities, transportation or waste management facilities which are subject to a planning permission facilitating their delivery no longer need to be protected for the purposes of this policy where the facility the subject of the planning permission has not been completed (for the purposes of occupation and operation) within 5 years of the date of the planning permission.”*

10. We suggest additional wording is inserted into Policy DM8 (beneath the list of seven criteria) to reflect the importance of exceptional cases such as the Proposed Development:

*“It is recognised that there are exceptional cases where the benefits of delivering a particular development are so great. Therefore, in the case of plan-led comprehensive new settlements, this policy will not apply.”*

#### Draft Policy DM 7 Amendments

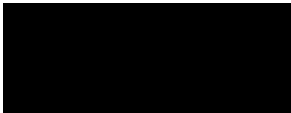
11. Where proposals for non-mineral developments come forward which make a significant housing contribution and provide a policy compliant level of affordable housing, the benefits should outweigh a presumption of continuing to safeguard a site for mineral extraction which has not yet come forward – this should be stated as a specific example of exemption in the policy wording. Delivery of housing to meet the trajectory envisaged in the recently adopted FHDC Core Strategy Review (2022) should be taken into account. Where there is conflict between policies in a plan which is adopted after another document in the development plan, the more recent policy takes precedent. In this instance, the more recent document is the FHDC Core Strategy Review (2022), which designates the site as a new garden settlement.



12. We suggest that further additional wording could be inserted into Policy DM 7 (beneath the list of seven criteria) to reflect the importance of exceptional cases such as the Proposed Development:

*“It is recognised that there are exceptional cases where the benefits of delivering a particular development are so great. Therefore, in the case of plan-led comprehensive new settlements, this policy will not apply.”*

Yours sincerely



Poppy Carmody-Morgan  
Associate Director

cc. Tom Vernon, Quod  
cc. Andy Jarrett, Otterpool Park LLP  
cc. Dave Shore, Otterpool Park LLP



## Appendix 1 - Landowner letter

**Trevor Heathcote LLP**  
Stanford Bridge Farm  
Station Road  
Pluckley  
Ashford  
Kent TN27 0RU

Otterpool Park LLP  
Race Course Office  
Stone Street  
Westenhanger  
Hythe  
Kent CT21 4HX

23<sup>rd</sup> October 2020

Dear Sirs

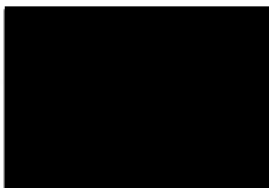
**Ref: Otterpool Quarry, Ashford Road, Lympne, Kent TN25 6DA**

Further to our meeting of 20<sup>th</sup> October and our ongoing discussion with regards to the above site, I can confirm the current strategy of Trevor Heathcote LLP is to develop Otterpool Quarry for residential use.

DHA Planning consultants were engaged back in June 2019 and consultation was made with Folkestone and Hythe District Council's planning team for a pre-app in September of the same year. Our intention is for the site to be encompassed into the wider Otterpool Park residential development scheme.

I hope this clarifies our intentions as of today.

Yours sincerely



James Davey  
For and on behalf of Trevor Heathcote LLP

Appendix 2: Applications for Waste Facilities in East Kent since 2009



Reference	Address	Proposal	Date of Decision	Progression	Operational Capacity
KCC/GR/0168/2022	Britannia Refined Metals Ltd, Britannia Metal Refinery and Premises, Lower Road, Northfleet, Gravesend, Kent DA11 9BG	Development of an enclosed electronic waste (E-Scrap) transfer facility, involving shredding, sampling, sorting, and bulking up of electronic waste streams for onward transportation to recycling / management facilities. The proposed development includes construction of a new steel framed waste transfer building, firewater storage tank and associated plant, dust extraction unit, office and staff welfare building, new areas of concrete hard standing and footways, upgrade to site drainage, construction of a re-aligned access point off Manor Way and retention of vehicular access to the adjacent wharf	Exp. 05/01/2023	Application still under consideration (should be kept under view by KCC and taken into account at the appropriate point during local plan preparation).	25,000 tonnes per annum
KCC/DA/0200/2021	Sheerness Recycling Ltd, Land to the South of Manor Way, Swanscombe, Kent DA10 0PP	Operation of aggregates recycling facility to accept 150,000tpa of construction and demolition waste	27/10/2022	-	150,000 tonnes per annum
KCC/SW/0081/2021	Cleve Hill Farm, Cleve Hill, Graveney, Kent ME13 9EE	Change of use from storage of empty skips and associated plant to storage and processing of waste on site within an existing barn	19/10/2021	-	2,500 – 3,500 tonnes per annum
KCC/MA/9965/2020	Elliott Environmental Drainage Ltd, St Michael's Close, Aylesford, Kent, ME20 7XE	The change of use from an existing industrial unit to form a Waste Treatment Facility, including the construction of both external and internal treatment plant, an internal packaging plant and other ancillary development	11/10/2021	-	25,000 tonnes per annum
KCC/TM/0284/2019	Allington Integrated Waste Management Facility, 8-14 Meard Street, Laverstoke, Allington, Kent	Proposed development of a Household Waste Recycling Centre, new access to a highway, associated infrastructure and earthworks	27/07/2020	Applicant has discharged a range of pre-commencement	440,000 tonnes per annum



Reference	Address	Proposal	Date of Decision	Progression	Operational Capacity
	Maidstone, Kent, ME16 0LE			conditions relating to the development.	
KCC/DA/0253/2019	St Margarets Farm, St Margarets Road, South Darenth, Dartford, Kent DA4 9LB	Regularisation and extension of the existing Green Waste Composting (GWC) facility and construction and operation of a biomass combined heat and power (CHP) plant for the processing of up to 5,200tpa of locally sourced green waste and timber and associated facilities and landscaping	21/04/2020	Applicant has discharged a range of pre-commencement conditions relating to the development.	5,200 tonnes per annum
KCC/TW/0182/2019	Omni Recycling Ltd, North Farm Lane, Royal Tunbridge Wells, Kent TN2 3EE	Change of use of land from an existing aggregate recycling facility to a waste transfer station for the acceptance, storage and treatment of non-hazardous household, commercial and industrial wastes	17/12/2019	The applicant has submitted a section 73 application to vary one of the conditions, and has discharged one condition	45,000 tonnes per annum
KCC/SW/0506/2018	Units 1 & 2 Marshbank Industrial Estate, Old Ferry Road, Iwade, Sittingbourne, Kent ME9 8SW	Application for planning permission for the change of use of land from storage and parking of HGVs to a small-scale waste management facility	12/11/2019	N/A	5,000 tonnes per annum





Reference	Address	Proposal	Date of Decision	Progression	Operational Capacity
KCC/DO/0474/2018	East Kent Recycling Limited, Aylesham Industrial Estate, Cooting Road, Aylesham, Kent CT3 3EL	The redevelopment of an existing industrial site into a waste management use to provide for a fully enclosed waste	12/08/2019	The applicant has begun to discharge pre-commencement conditions.	45,000 tonnes per annum
KCC/SW/0090/2018	Site D, Oare Creek, Faversham, Kent, ME13 7TX	Redevelopment of an existing waste management facility (part retrospective)	09/08/2019	The applicant has begun to discharge pre-commencement conditions.	45,000 tonnes per annum
KCC/DO/0256/2017	The Old Tilmanstone Colliery, Pike Road, Eythorne, Kent, CT15 4ND	Development of a waste management facility including the change of use of an existing building to enclose various operations, including a mechanical treatment plant (MRF) and bulking wastes for transfer, the external storage and treatment of waste materials including by crushing and screening and soil washing, the installation of two weighbridges and a weighbridge office, and use as an intermediate shipping point or logistics hub for refuse derived fuel at the former Tilmanstone brickworks (part retrospective)	05/03/2019	The applicant has begun to discharge pre-commencement conditions.	375,000 tonnes per annum
KCC/SW/0050/2018	LKM Recycling, Bonham Drive, Eurolink Business Park, Sittingbourne, Kent, ME10 3SY	A part retrospective application to allow the development and operation of a Materials Recycling Facility (MRF), including construction of a number of external covered storage bays and provision of a site office. The construction of a waste	09/11/2018	N/A	20,000 tonnes per annum



Reference	Address	Proposal	Date of Decision	Progression	Operational Capacity
		reception/handling building and the installation of materials recycling plant/equipment.			
KCC/DA/0003/2014	Plot 14 and Units C1 and C3, Manor Way, Swanscombe, Kent, DA10 0PP	Construction of building to accommodate plant for the processing and transfer of construction, demolition and excavation wastes and commercial and industrial wastes with weighbridge and office, external processing plant, storage bays and fencing	13/04/2016	N/A	75,000 tonnes per annum



**Our ref:** Q80641  
**Your ref:**  
**Email:** Poppy.carmody-morgan@quod.com  
**Date:** 19 July 2023

Minerals and Waste Planning Policy Team  
Kent County Council  
1<sup>st</sup> Floor,  
Invicta House,  
Maidstone,  
Kent,  
ME14 1XX

Dear Sir/ Madam,

## **Kent Minerals and Waste Local Plan 2023-38 Regulation 18 Consultation Document**

### [Introduction and Context](#)

Quod is instructed by our client, Otterpool Park LLP, to submit representations to the Kent Minerals and Waste Local Plan (KMWLP) Regulation 18 consultation which runs from 13<sup>th</sup> June – 25<sup>th</sup> July 2023.

Otterpool Park LLP are seeking to bring forward development on the site identified as 'Otterpool Park' where the development of a new garden settlement is supported as per Policy SS6 of the Folkestone & Hythe District Council (FHDC) Core Strategy Review, adopted in 2022.

On 4 April 2023, FHDC Planning Committee resolved to grant outline planning consent for a residential led mixed use development of up to 8,500 homes, along with retail, commercial, education, health, community uses and associated infrastructure at Otterpool Park (ref: Y/19/0257/FH).

Kent's Strategic Delivery Plan (2020-2023, page 9) states that "Kent County Council (KCC) will work collaboratively with the relevant district Council as the local planning authority, landowners, and Homes England, as the Government's 'housing accelerator' in order to positively influence the delivery" of Otterpool Park. These representations are prepared with the delivery of Otterpool Park in mind.

More recently, Kent County outlined their support for the principle of the delivery of a garden settlement at Otterpool Park within their consultation response issued on 17<sup>th</sup> March 2023. The County Council confirmed that:

*"The County Council has provided support for the positively planned delivery of a new garden settlement at Otterpool Park supported by the timely provision of infrastructure in a truly green setting".*

The amendments proposed within Kent County Council's current consultation are relatively limited in nature, but the most significant of which relates to the proposal to delete draft 'Policy CSW 5 – Strategic Site for Waste', which allocates land at Norwood Quarry Landfill site, Isle of Sheppey. Development of the land was envisaged to extend the life of an existing landfill site, which is now expected to be exhausted by 2028.

### Representations

Quod, on behalf of Otterpool Park LLP, have previously submitted representations to the KMWLP consultations. Our previous representations submitted to the County Council in February and December 2022 still stand and are appended to this letter (Appendix 1).

We request the following amendments are made:

#### Preparation of the local plan:

1. The KMWLP should be updated to make clear how KCC intends to achieve the waste targets set out in Policy CSW 4 i.e. through which sites will waste facilities be located on.
2. As outlined above, the latest proposed update to the draft Kent Minerals and Waste Local Plan 2023-38 proposes to remove the site allocation for the proposed extension areas for Norwood Quarry and Landfill Site (Policy CSW5). Whilst, in principle, Quod does not object to this amendment, it is important that the Plan should seek to meet demand for waste in a planned and sustainable manner.
3. KCC should be clear what waste transfer facilities are required, taking into account already delivered facilities within the county. KCC should then undertake a call for sites consultation, an assessment of the most suitable sites and carry out the process of allocating sites through the local plan to provide the necessary waste transfer facilities. A waste transfer facility would not be best placed in the location of the Permitted Waste Facility at Otterpool Park (application reference SH/08/124).
4. KCC should not rely on waste facilities providing capacity if they have not been delivered within five years of being granted consent and KCC should consider bringing forward alternative or additional allocations if it considers that is necessary (for example, given the doubts about the prospects of the Permitted Waste Facility (SH/08/124) coming forward, KCC should not be relying on it to provide capacity for the authority going forward).

#### Draft CSW 16 amendments:

5. For the plan to be found sound, draft Policy CSW 16 should be amended to reflect the need to safeguard waste management facilities that do provide waste capacity and not just theoretical capacity. We suggest it should be amended to state:

*“capacity at sites with permanent planning permission for waste management **and that are operational within 5 years of planning consent being granted**, is safeguarded from being developed for non-waste management uses”* (or we would be content for it to say 10 years rather than 5 years if KCC considered that to be more appropriate).

6. For the same reason, the definition in footnote 114 of draft Policy CSW 16 should be amended to state:

*“Existing facilities’ are taken as those **which** have permanent planning permission for minerals and waste uses **and that are operational within 5 years of the planning consent being granted**”*

(or we would be content for it to say 10 years rather than 5 years if KCC considered that to be more appropriate).

7. The Kent MWLP Annual Monitoring Report (AMR) should be updated to include a clear list of waste sites.
8. It is not appropriate to prevent non-waste uses on sites in perpetuity where waste facilities have been granted permission previously and reference should be made in Policy CSW 16 to Policy DM8 which provides criteria for when non-waste development could come forward.

#### Draft Policy DM 8 amendments:

9. Where proposals for non-waste uses come forward which make a significant housing contribution and provide a policy compliant level of affordable housing, the benefits should outweigh a presumption of continuing to safeguard a site for waste provision which has not yet come forward within 5 years of consent being granted – this should be stated as a specific example of exemption in the policy wording.

10. We suggest additional wording is inserted into Policy DM8 (following the list of seven criteria):

*“Safeguarded minerals management facilities, transportation or waste management facilities which are subject to a planning permission facilitating their delivery no longer need to be protected for the purposes of this policy where the facility the subject of the planning permission has not been completed (for the purposes of occupation and operation) within 5 years of the date of the planning permission.”*

11. We suggest additional wording is inserted into Policy DM8 (beneath the list of seven criteria) to reflect the importance of exceptional cases such as the Proposed Development:

*“It is recognised that there are exceptional cases where the benefits of delivering a particular development are so great. Therefore, in the case of plan-led comprehensive new settlements, this policy will not apply.”*

#### Draft Policy DM 7 Amendments

12. Where proposals for non-mineral developments come forward which make a significant housing contribution and provide a policy compliant level of affordable housing, the benefits should outweigh a presumption of continuing to safeguard a site for mineral extraction which has not yet come forward – this should be stated as a specific example of exemption in the policy wording. Delivery of housing to meet the trajectory envisaged in the recently adopted FHDC Core Strategy Review (2022) should be taken into account. Where there is conflict between policies in a plan which is adopted after another document in the development plan, the more recent policy takes precedent. In this instance, the more recent document is the FHDC Core Strategy Review (2022), which designates the site as a new garden settlement.

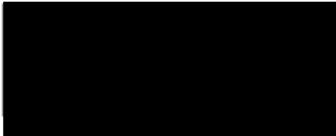
13. We suggest that further additional wording could be inserted into Policy DM 7 (beneath the list of seven criteria) to reflect the importance of exceptional cases such as the Proposed Development:

*“It is recognised that there are exceptional cases where the benefits of delivering a particular development are so great. Therefore, in the case of plan-led comprehensive new settlements, this policy will not apply.”*

Conclusion

Emerging planning policy should not prejudice the ability for FHDC and KCC's strategic objectives from being met and the Proposed Development at Otterpool Park from being properly delivered, which would in turn deliver a significant number of benefits. The first priority in KCC's Strategic Delivery Plan (2020-2023) is for Kent to be an ambitious and successful county, with high quality jobs, skilled workers, enterprising businesses and thriving urban and rural areas. To achieve this the Plan states on page 9 that KCC will work collaboratively with the relevant district councils and landowners in order to positively influence the delivery of the garden communities across Kent – including Otterpool Park. The emerging KMWLP should be revised so that this priority can be achieved.

Your Sincerely,



Poppy Carmody-Morgan  
Associate Director

cc. Tom Vernon, Quod  
cc. Andy Jarrett, Otterpool Park LLP  
cc. Dave Shore, Otterpool Park LLP

## Appendix 1

## **Kent County Council - Draft Waste and Minerals Plan (Regulation 18 Consultation)**

### **Representations Submitted on Behalf of Otterpool Park LLP**

#### **Introduction and Context**

1. We are instructed by our client, Otterpool Park LLP (the “LLP”), to make representations to Kent County Council’s (“KCC”) Regulation 18 consultation documents in respect of its proposed update to the Minerals and Waste Local Plan, last updated in September 2020 through the Early Partial Review (“KMWLP”).
2. In February 2019 the LLP submitted an outline planning application for a landscape-led garden town development known as Otterpool Park (the “Proposed Development”) to Folkestone and Hythe District Council (“FHDC”). The application has application ref. Y/19/0257/FH.
3. Otterpool Park is allocated for development in the FHDC Regulation 19 Core Strategy Review (Submission Draft, February 2020, with 2021 Main Modifications) and has been identified as a site of strategic importance, contributing significantly towards meeting the District Council’s identified housing need.
4. The garden community approach which underpins the outline planning application provides an opportunity to create an innovative, resilient and inclusive community to stand the test of time. Planning at this scale provides the opportunity to think holistically about how a place will function, and to understand what mechanisms need to be delivered to help turn a vision underpinned by the Garden City Principles into a flourishing place to live, work and visit.
5. KCC granted planning consent for a permitted waste facility at Otterpool Quarry, Ashford Road, in March 2011 (application reference no. SH/08/124) (the “Permitted Waste Facility”). The planning consent was implemented under the terms of the permission, but only a minimal amount of development was undertaken to secure the permission.
6. The LLP can confirm that the landowner of the Permitted Waste Facility site has no aspiration to complete the consented development and build out the facility.
7. The Proposed Development could, however, result in the loss of the opportunity to build out the Permitted Waste Facility.
8. The KMWLP and the Kent Minerals Sites Plan together control and manage development proposals in the County. Policy DM8 of the KMWLP controls future development in the context of safeguarding minerals management, transportation production and waste management facilities. Policy DM8 confirms that planning permission will only be granted for development that is incompatible with the Permitted Waste Facility at Otterpool Quarry where it can be demonstrated that one of seven criteria can be met.
9. Accordingly, given the nature of the Proposed Development and the relationship with the Permitted Waste Facility, the LLP’s application submission seeks to confirm that the requirements of Policy DM8 of the KMWLP have been met in respect of the Permitted Waste Facility.
10. The LLP considers Policy DM8, as its currently stands, to be too restrictive, particularly in the specific context of the Proposed Development and the Permitted Waste Facility.
11. Emerging planning policy and guidance should not prejudice the ability for FHDC’s strategic objectives from being met and the Proposed Development from being properly delivered, which would in turn deliver a significant number of regenerative benefits. The Regulation 18 consultation update to the KMWLP proposes no change to Policy DM8, save for a very minor amendment to recognise that the KCC Safeguarding Supplementary Planning Document is now



adopted. Therefore, if adopted as proposed, the Regulation 18 consultation update to the KMWLP would not address the restrictive nature of Policy DM8.

12. Our representations on the Regulation 18 consultation document are made in this context and are set out below.

### Policy DM8

13. Policy DM8 as currently written in the KMWLP states that:

*“Planning permission will only be granted for development that is incompatible with safeguarded minerals management, transportation or waste management facilities, where it is demonstrated that either:...”*

14. Policy DM8 then provides seven criteria for applicants to seek to demonstrate their proposals against.

15. However, it is considered that the hurdles that an applicant is required to overcome to meet the criteria are, in some circumstances, too great and, importantly, do not reflect site-specific conditions about a particular safeguarded facility and its relationship with a potential development which may impact its delivery.

16. For instance, the current Policy DM8 does not consider a scenario where a safeguarded minerals management, transportation or waste management facility has no (or extremely limited) prospect of being delivered. This includes, for instance, permitted facilities which are either extant but yet to be implemented, or where implementation has taken place but it will not be completed (such as the Permitted Waste Facility). As confirmed above, the landowner of the Permitted Waste Facility site has no aspiration to complete the consented development and build out the facility.

17. In addition, there are elements of existing Policy DM8 which enable a subjective view to be adopted. For instance, Criteria 6 states that planning permission will only be granted for development that is incompatible where *“material considerations indicate that the need for development overrides the presumption for safeguarding”*. This wording, in our view, allows the decision-taker (KCC in this case) to push back on a proposal for a development and not accept the ‘material considerations’ being advanced by an applicant, regardless of how significant the material considerations are and the significance of the scheme that they relate to.

18. Policy DM8 currently provides very little opportunity for an applicant of an ‘incompatible’ development to align themselves to specific planning circumstances that could be met to expressly justify the loss of a safeguarded facility. Planning and development policies throughout the UK often include time-based and evidence-based tests which, if met, allow an existing use or operation to be replaced by another use or operation (for example, where suitable marketing evidence of at least 2 years demonstrates that demand for an existing employment use is no longer present and that use can be changed to another).

19. Introduction of such wording would, in our view, represent a more pragmatic approach and would enable safeguarded sites to be protected where necessary, but recognise that in some instances it is not appropriate to continue to plan for their delivery.

20. We therefore suggest that the following wording is inserted into Policy DM8 (following the list of seven criteria):

*“Safeguarded minerals management facilities, transportation or waste management facilities which are subject to a planning permission facilitating their delivery no longer need to be protected for the purposes of this policy where the facility the subject of the planning permission has not been completed (for the purposes of occupation and operation) within 5 years of the date of the planning permission.”*

21. We are aware that KCC will not wish to set an unhelpful precedent which could lead to a raft of proposed developments being able to overcome a minerals management, transportation or

**Our ref:** Q80641  
**Your ref:**  
**Email:** Poppy.carmody-morgan@quod.com  
**Date:** 02 December 2022



Minerals and Waste Planning Policy Team  
Kent County Council  
1<sup>st</sup> Floor,  
Invicta House,  
Maidstone,  
Kent,  
ME14 1XX

Dear Sir/ Madam,

## **Kent Minerals and Waste Local Plan 2023-38 Regulation 18 Consultation Document**

### [Introduction and Context](#)

Quod is instructed by our client, Otterpool Park LLP, to submit representations to the Kent Minerals and Waste Local Plan (KMWLP) Regulation 18 consultation which runs from 24<sup>th</sup> October – 5<sup>th</sup> December 2022.

Otterpool Park LLP are seeking to bring forward development on the site identified as ‘Otterpool Park’ where the development of a new garden settlement is supported as per Policy SS6 of the Folkestone & Hythe District Council (FHDC) Core Strategy Review, adopted in 2022. The site is currently the subject of a live planning application (ref: Y/19/0257/FH) proposing to deliver a residential led mixed use development of up to 8,500 homes, along with retail, commercial, education, health, community uses and associated infrastructure (the ‘Proposed Development’).

An application for outline planning consent for the Proposed Development was submitted by Quod, on behalf of Otterpool Park LLP, in February 2019. Subsequently, revisions and updated documents have been submitted to address comments from consultees and optimise the deliverability of the application.

Kent’s Strategic Delivery Plan (2020-2023, page 9) states that “Kent County Council (KCC) will work collaboratively with the relevant district Council as the local planning authority, landowners, and Homes England, as the Government’s ‘housing accelerator’ in order to positively influence the delivery” of Otterpool Park. These representations are prepared with the delivery of Otterpool Park in mind.

### [Otterpool Quarry Permitted Waste Facility](#)

KCC granted planning consent for a permitted waste facility at Otterpool Quarry, Ashford Road, in March 2011 (application reference no. SH/08/124) (the ‘Permitted Waste Facility’). It is understood by KCC that the planning consent has been implemented under the terms of the permission. Only a



minimal amount of development has however taken place to implement the consent (provision of kerbs at the entrance to the site). Since then, there has been no work undertaken to deliver the facility.

There have been five applications on the site submitted since the Permitted Waste Facility consent was granted in 2011:

- Y16/0066/SH - Advertisement consent for a freestanding aluminium composite panel sign, located along the highway verge, directing lorries to the entrance to the lorry park and two placard/banners displayed on the fencing and entrance gate to the site – not determined.
- Y16/0068/SH - Retrospective planning application for change of use of a former quarry site to a temporary secure 24-hour lorry park with associated facilities for a period of 24 months – refused 19 May 2017.
- Y17/1012/SH – application for change of use from a former quarry site to a temporary use for the storage of containers, installation of additional hardstanding for turning-head and the storage of materials associated with the Channel – withdrawn 25 September 2017.
- Y16/0067/SH - Advertisement consent for two road direction signs located on the screen to the front of the site –approved 2 October 2020.
- 21/2155/FH – application for temporary planning permission for up to 5 years for parking and stationing of 24no HGVs and 10no vehicle parking, with temporary stationing of ancillary facilities – not yet determined.

The site is currently used for lorry parking and has been since at least 2015 (acknowledged in application ref Y16/0068/SH). The site is not operational as a waste facility and the landowner of the site has no aspiration to build out the Permitted Waste Facility. Please see appended letter from the landowner which confirms this is the case (Appendix 1).

The Permitted Waste Facility is located within the boundary of Otterpool Park. The Proposed Development as now submitted, identifies two built development options in the context of the Permitted Waste Facility. The preferred option shows Otterpool Park development in the location of the Permitted Waste Facility, whilst the proposed alternative option incorporates measures to accommodate the Permitted Waste Facility alongside the delivery of the new garden settlement.

It should be noted that the adopted Core Strategy Review (2022) does not contemplate the co-location of the Permitted Waste Facility within the SS6 Otterpool Park allocation. There are no policies within the document which require the provision of a waste facility. Within paragraph 4.1.93 of Core Strategy Review (2022) it discusses the Permitted Waste Facility but anticipates that there is a scenario where the Permitted Waste Facility is not delivered. The Permitted Waste Facility is not allocated as a waste site in the adopted KMWLP.

Our representations on the Regulation 18 consultation document are made in this context and are set out below.



### Preparation of the KMWLP:

The National Planning Policy for Waste (2014) confirms that waste plans should be prepared using a proportionate evidence base, including ensuring that the need for waste management facilities is considered alongside other spatial planning concerns, such as housing and transport (page 3). As such, the draft KMWLP when seeking to plan for waste provision should take account of spatial allocations in other plans, such as the FHDC Core Strategy Review (2022).

The Local Plan relating to waste should identify sufficient opportunities to meet the identified needs of its area for the management of waste, aiming to drive waste management up the Waste Hierarchy. It should ensure that suitable sites and areas for the provision of waste management facilities are identified in appropriate locations (NPPG Paragraph: 011 Reference ID: 28-011-20141016). Draft Policy CSW 4 of the KMWLP sets out targets for recycling, composting, landfill and other recovery but the plan itself is not clear on how those targets are going to be achieved.

Paragraph 6.3.6 of the draft KMWLP states “the WDA has identified a pressing need for the development of new waste transfer facilities to serve those particular areas where collected waste can be bulked up for onward management and is working with the local WCAs to secure this” but KCC should be clear in the KMWLP on what this need is and then undertake the process of allocating a site(s) to provide these facilities.

The Permitted Waste Facility consent grants permission for materials recycling and an anaerobic digestion plant so safeguarding the site would not help meet the pressing need for waste transfer facilities as identified in paragraph 6.3.6 of the draft KMWLP. A call for sites consultation should be undertaken followed by an assessment of the most suitable sites to provide waste transfer facilities. A waste transfer facility would not be best placed in the location of the Permitted Waste Facility given its current rural location and distance to other development where waste is created nor suitable within the centre of a proposed new garden settlement given the vision of the place to be created.

If KCC wish to “ensure sufficient capacity exists to maintain a county-wide network for the sustainable management of Kent’s waste” (one of the Strategic Objectives for the KMWLP stated on page 49 of the consultation document) and KCC don’t consider they have sufficient sites to achieve this already, KCC should undertake a call for sites consultation and undertake the process of allocating sites through the local plan to provide the necessary facilities. This is necessary for the plan to be positively prepared, justified and effective.

The NPPG states that “Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities. It is important that waste planning authorities engage and collaborate with local communities in an early and meaningful way when identifying options for managing waste” (Paragraph: 012 Reference ID: 28-012-20141016) but from the draft KMWLP the local community cannot be clear on what site options are identified for managing waste (particularly new waste transfer facilities). It should be noted that there was significant public objection to the



Permitted Waste Facility at the time of the planning application. Furthermore, KCC should consider the new garden settlement at Otterpool Park (allocated within the newly adopted FHDC Core Strategy Review, 2022) within the requirement to reflect the “vision and aspiration of local communities” – the new garden settlement is the primary vision for the local area’s growth and a new waste facility at Otterpool Quarry would be directly at odds with achieving this vision.

Applying the definition of ‘existing facilities’ at footnote 114 of the draft KWMLP, the evidence base to the draft KWMLP should consider the other waste sites in East Kent that have been granted planning consent and they should be factored in when deciding if the Permitted Waste Facility needs to be safeguarded (see Appendix 2 of this letter for a list of waste applications submitted in East Kent since 2009).

The NPPG states that “consideration should be given to why any allocated sites and areas have not been taken up as anticipated. If there are doubts about the prospects of particular land allocations coming forward, and this would damage the planning strategy, consideration will need to be given to bringing forward alternative, or additional, allocations.” (Paragraph: 054 Reference ID: 28-054-20141016). We note that the Permitted Waste Facility is not allocated but the ethos of the guidance is still relevant - KCC should not be relying on it to provide capacity for the authority going forward given the doubts about its prospects of coming forward and KCC should consider bringing forward alternative or additional allocations.

Table A3 in the Kent Waste Needs Assessment 2022 Update, which forms part of the evidence base to this consultation, lists Otterpool Quarry as a site which provides consented Organic Waste Treatment capacity (20,000tpa out of a total of 305,000tpa). Although it is correct to say it is consented, given that it has not been delivered and has not been in the 11 years since it was granted consent, and it is known that the land owner does not intend to build the facility, we cast doubt that it should be counted as a realistic prospect for providing capacity. This doubt should be factored into KCC’s waste need and supply calculations. For a plan to be found there needs to be an evidential basis for safeguarding sites.

#### [Draft Policy CSW 16](#)

Policy CSW 16 of the draft KMWLP states that “*capacity at sites with permanent planning permission for waste management is safeguarded from being developed for non-waste management uses*”.

The draft KMWLP therefore seeks to roll forward sites that have previously been given planning permission for waste facilities as those which should be safeguarded. This results in theoretical capacity being safeguarded (like through the Permitted Waste Facility) rather than genuine real-world capacity. Case law supports that decisions should be made in the real world rather than on theoretical positions. If a site has planning permission for waste facilities, it does not automatically mean that the site provides waste capacity and should be safeguarded. As noted above, Paragraph: 054 Reference



ID: 28-054-20141016 of the NPPG makes clear that if there are doubts about the prospects of sites coming forward consideration should be given to bringing forward alternative or additional allocation if needed rather than relying on them coming forward to achieve the strategy.

Paragraph 7.6.1 of the draft KMWLP states:

*“It is essential to the delivery of this Plan's minerals and waste strategy that existing facilities<sup>114</sup> used for the management of minerals (including wharves and rail depots) and waste are safeguarded for the future, in order to enable them to continue to be used to produce and transport the minerals needed by society and manage its waste.*

<sup>114</sup> *“Existing facilities’ are taken as those have permanent planning permission for minerals and waste uses.”*

A key part of the above text is that the facilities which are essential to safeguard for the future are the ones that are “**used** for the management of...waste” (our emphasis).

The Permitted Waste Facility at Otterpool Quarry is not built and is therefore not used for the management of waste, it does not provide any operational capacity or perform any waste function and should not therefore be safeguarded. It has been used for lorry parking since summer 2015 as acknowledged through application reference Y16/0068/SH. This is a clear indication that the need for the Permitted Waste Facility is not there nor is it the intention for the landowner to deliver it. On this basis, it cannot be considered to be used or in use in the manner that the policy intends.

Draft Policy CSW 6 (g) itself states that the location of built waste management facilities should avoid sites on or in proximity to land where alternative development exists/has planning permission or is identified in an adopted Local Plan (such as the Proposed Development through the adopted FHDC Core Strategy Review (2022)).

Paragraph 119 of the National Planning Policy Framework (NPPF) (2021) states that planning policies and decision “should promote an effective use of land in meeting the need for homes and other uses”. If planning permission has been granted for waste uses on a site but despite this, 11 years later it still has not been developed, it would not be an effective use of land to continue safeguarding the site for waste uses and prevent the delivery of new uses which are supported by local policy and offer tangible benefits.

Paragraph 82 of the NPPF (2021) states that planning policies should “be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices...and to enable a rapid response to changes in economic circumstances”. The current wording of CSW 16 is not flexible or respond to changes in economic circumstances as it safeguards sites which are not providing waste capacity.



It is not appropriate to prevent non-waste uses on the site in perpetuity and reference should be made in Policy CSW 16 to Policy DM8 which provides criteria for when non-waste development could come forward.

Paragraph 8 of the National Planning Policy for Waste (2014) states that when determining planning applications for non-waste development, local authorities should, to the extent appropriate to their responsibilities, ensure that “the likely impact of proposed, non-waste related **development on existing waste management facilities, and on sites and areas allocated for waste management**, is acceptable and does not prejudice the implementation of the waste hierarchy and/or the efficient operation of such facilities” (our emphasis). It does not refer to sites which have previously been given planning permission. The KWMLP should therefore focus on ensuring the safeguarding of existing waste management facilities that have been built and allocated sites and areas rather than sites who have previously just been granted planning consent.

Permanent planning permission does not necessarily result in waste capacity. For the plan to be found sound, draft Policy CSW 16 should be amended to reflect the need to safeguard waste management facilities that do provide waste capacity and not ones that provide just theoretical capacity. We suggest it should be amended to state:

*“capacity at sites with permanent planning permission for waste management **and that are operational within 5 years of planning consent being granted**, is safeguarded from being developed for non-waste management uses”* (or we would be content for it to say 10 years rather than 5 years if KCC considered that to be more appropriate).

For the same reason, the definition in footnote 114 of paragraph 7.6.1 should be amended to state:

*“Existing facilities: are taken as those **which have permanent planning permission for minerals and waste uses and that are operational within 5 years of the planning consent being granted**”* (or we would be content for it to say 10 years rather than 5 years if KCC considered that to be more appropriate).

Policy CSW 16 and the supporting text in paragraph 6.16.1 states that a list of waste sites is updated and published each year in the Kent MWLP Annual Monitoring Report (AMR). We do not consider that a clear list is provided in the AMR.

### [Draft Policy DM 8](#)

Policy DM 8 sets out the circumstances when safeguarded minerals and waste development may be replaced by non-waste and minerals uses.

We consider that Policy DM8 should only apply for waste facilities where there is existing operational capacity which is proposed to be lost through proposals for non-waste uses.



Notwithstanding that we consider that the Permitted Waste Facility should not be safeguarded and therefore this policy should not be applied to Otterpool Park proposals, we consider draft Policy DM 8 is overly restrictive and should be updated to take account of the recently adopted Core Strategy Review (2022), which does not require a waste facility to be provided within the new garden settlement allocation area. Paragraph: 072 Reference ID: 61-072-20190315 states that where there is conflict between policies in a plan which is adopted after another document in the development plan, the more recent policy takes precedent. In this instance, the more recent document is the FHDC Core Strategy Review (2022), which designates the site as a new garden settlement.

It is considered that the hurdles that an applicant is required to overcome to meet the criteria are, in some circumstances, too great and, importantly, do not reflect site-specific conditions about a particular safeguarded facility and its relationship with a potential development which may impact its delivery.

For instance, the current Policy DM8 does not consider a scenario where a safeguarded minerals management, transportation or waste management facility has no (or extremely limited) prospect of being delivered. This includes, for instance, permitted facilities which are either extant but yet to be implemented, or where implementation has taken place but it will not be completed (such as the Permitted Waste Facility). As confirmed above, the landowner of the Permitted Waste Facility site has no aspiration to complete the consented development and build out the facility.

In addition, there are elements of existing Policy DM8 which enable a subjective view to be adopted. For instance, Criteria 6 states that planning permission will only be granted for development that is incompatible where “material considerations indicate that the need for development overrides the presumption for safeguarding”. This wording, in our view, allows the decision-taker (KCC in this case) to resist a proposal for alternative development and not accept the demonstrable ‘material considerations’ that weigh in the determination of planning applications, as required by s38(6) of TCPA 1990, irrespective of their significance.

Policy DM8 as currently drafted is ineffective. There is a demonstrable housing and affordable housing crisis in the local area and nationally. Where proposals for non-waste uses come forward which make a significant housing contribution and provide a policy compliant level of affordable housing the benefits should outweigh a presumption of continuing to safeguard a site for waste provision – this should be stated as a specific example of exemption in the policy wording.

Policy DM8 currently provides very little opportunity for an applicant of an ‘incompatible’ development to align themselves to specific planning circumstances that could be met to expressly justify the loss of a safeguarded facility. Planning and development policies throughout the UK often include time-based and evidence-based tests which, if met, allow an existing use or operation to be replaced by another use or operation (for example, where suitable marketing evidence of at least 2 years demonstrates that demand for an existing employment use is no longer present and that use can be changed to another).





Introduction of such wording would, in our view, represent a more pragmatic approach and would enable safeguarded sites to be protected where necessary, but recognise that in some instances it is not appropriate to continue to plan for their delivery.

We therefore suggest that the following wording is inserted into Policy DM8 (following the list of seven criteria):

*“Safeguarded minerals management facilities, transportation or waste management facilities which are subject to a planning permission facilitating their delivery no longer need to be protected for the purposes of this policy where the facility the subject of the planning permission has not been completed (for the purposes of occupation and operation) within 5 years of the date of the planning permission.”*

It would be appropriate for each application for non-waste development on a safeguarded site to be assessed on its own merits and for KCC to take a considered and proportionate view when balancing the need to maintain the safeguarded facility versus the need for specific development to come forward as required to facilitate regeneration and to deliver benefits. The Proposed Development, for instance, provides a once in a generation opportunity to create an innovative, resilient and inclusive community to stand the test of time and to deliver a vision which is underpinned by the Garden City Principles. Importantly, the Proposed Development is allocated for development and is identified as a site of strategic importance, contributing significantly towards meeting the District Council’s identified housing need. In short, the planning case for the Proposed Development to be properly delivered is significant.

We therefore suggest that further additional wording could be inserted into Policy DM8 (beneath the list of seven criteria) to reflect the importance of exceptional cases such as the Proposed Development:

*“It is recognised that there are exceptional cases where the benefits of delivering a particular development are so great. Therefore, in the case of plan-led comprehensive new settlements, this policy will not apply.”*

It is considered that if this new wording is introduced into Policy DM8 it will not prevent KCC from managing safeguarded sites across the County. Instead, it will allow decisions to be made on a case-by-case basis to facilitate the delivery of new development where it is genuinely required and which represents the optimal masterplan approach for a particular area.

These amendments were previously suggested to KCC in February 2022, but KCC considered that “Policy DM8 allows for development to come forward in a number of circumstances and one or more of those may apply in this case” (Consultation Summary Document, 2022). We do not agree that DM 8 allows development to proceed in cases where it should be allowed to.



We understand that DM 8 is intended to operate where proposals will result in a loss of capacity, but this is not the case at Otterpool Park. More flexibility is necessary given the more recent policy position in the adopted Core Strategy Review 2022. For example, Criteria 3 of DM 8 would allow non-waste development to come forward on the site if replacement capacity was provided elsewhere. The Permitted Waste Facility site is however not providing capacity currently so it would not be appropriate to require replacement capacity to be provided in the case where non-waste development is proposed on the site.

These amendments to policy DM8 are particularly important to be taken forward if KCC do not agree to the proposed amendments we have suggested to Policy CSW 16.

### Draft Policy DM 7

Draft Policy DM 7 describes the circumstances in which non-mineral developments that are incompatible with safeguarding a resource would be acceptable.

Where proposals for non-mineral developments come forward which make a significant housing contribution and provide a policy compliant level of affordable housing, the benefits should outweigh a presumption of continuing to safeguard a site for mineral extraction which has not yet come forward – this should be stated as a specific example of exemption in the policy wording. Delivery of housing to meet the trajectory envisaged in the recently adopted FHDC Core Strategy Review (2022) should be taken into account.

We suggest that further additional wording could be inserted into Policy DM 7 (beneath the list of seven criteria) to reflect the importance of exceptional cases such as the Proposed Development:

*“It is recognised that there are exceptional cases where the benefits of delivering a particular development are so great. Therefore, in the case of plan-led comprehensive new settlements, this policy will not apply.”*

### Conclusion

Emerging planning policy should not prejudice the ability for FHDC and KCC’s strategic objectives from being met and the Proposed Development at Otterpool Park from being properly delivered, which would in turn deliver a significant number of benefits. The first priority in KCC’s Strategic Delivery Plan (2020-2023) is for Kent to be an ambitious and successful county, with high quality jobs, skilled workers, enterprising businesses and thriving urban and rural areas. To achieve this the Plan states on page 9 that KCC will work collaboratively with the relevant district councils and landowners in order to positively influence the delivery of the garden communities across Kent – including Otterpool Park. The emerging KMWLP should be revised so that this priority can be achieved.



In summary we request that the following amendments are made:

Preparation of the local plan:

1. The KMWLP should be updated to make clear how KCC intends to achieve the waste targets set out in Policy CSW 4 i.e. through which sites will waste facilities be located on.
2. KCC should be clear what waste transfer facilities are required, taking into account already delivered facilities within the county. KCC should then undertake a call for sites consultation, an assessment of the most suitable sites and carry out the process of allocating sites through the local plan to provide the necessary waste transfer facilities. A waste transfer facility would not be best placed in the location of the Permitted Waste Facility.
3. KCC should not rely on waste facilities providing capacity if they have not been delivered within five years of being granted consent and KCC should consider bringing forward alternative or additional allocations if it considers that is necessary (for example, given the doubts about the prospects of the Permitted Waste Facility coming forward, KCC should not be relying on it to provide capacity for the authority going forward).

Draft CSW 16 amendments:

4. For the plan to be found sound, draft Policy CSW 16 should be amended to reflect the need to safeguard waste management facilities that do provide waste capacity and not just theoretical capacity. We suggest it should be amended to state:  
  
*“capacity at sites with permanent planning permission for waste management **and that are operational within 5 years of planning consent being granted**, is safeguarded from being developed for non-waste management uses”* (or we would be content for it to say 10 years rather than 5 years if KCC considered that to be more appropriate).
5. For the same reason, the definition in footnote 114 of draft Policy CSW 16 should be amended to state:  
  
*“Existing facilities: are taken as those **which** have permanent planning permission for minerals and waste uses **and that are operational within 5 years of the planning consent being granted**”* (or we would be content for it to say 10 years rather than 5 years if KCC considered that to be more appropriate).
6. The Kent MWLP Annual Monitoring Report (AMR) should be updated to include a clear list of waste sites.



7. It is not appropriate to prevent non-waste uses on sites in perpetuity where waste facilities have been granted permission previously and reference should be made in Policy CSW 16 to Policy DM8 which provides criteria for when non-waste development could come forward.

#### Draft Policy DM 8 amendments:

8. Where proposals for non-waste uses come forward which make a significant housing contribution and provide a policy compliant level of affordable housing, the benefits should outweigh a presumption of continuing to safeguard a site for waste provision which has not yet come forward – this should be stated as a specific example of exemption in the policy wording.
9. We suggest additional wording is inserted into Policy DM8 (following the list of seven criteria):

*“Safeguarded minerals management facilities, transportation or waste management facilities which are subject to a planning permission facilitating their delivery no longer need to be protected for the purposes of this policy where the facility the subject of the planning permission has not been completed (for the purposes of occupation and operation) within 5 years of the date of the planning permission.”*

10. We suggest additional wording is inserted into Policy DM8 (beneath the list of seven criteria) to reflect the importance of exceptional cases such as the Proposed Development:

*“It is recognised that there are exceptional cases where the benefits of delivering a particular development are so great. Therefore, in the case of plan-led comprehensive new settlements, this policy will not apply.”*

#### Draft Policy DM 7 Amendments

11. Where proposals for non-mineral developments come forward which make a significant housing contribution and provide a policy compliant level of affordable housing, the benefits should outweigh a presumption of continuing to safeguard a site for mineral extraction which has not yet come forward – this should be stated as a specific example of exemption in the policy wording. Delivery of housing to meet the trajectory envisaged in the recently adopted FHDC Core Strategy Review (2022) should be taken into account. Where there is conflict between policies in a plan which is adopted after another document in the development plan, the more recent policy takes precedent. In this instance, the more recent document is the FHDC Core Strategy Review (2022), which designates the site as a new garden settlement.



12. We suggest that further additional wording could be inserted into Policy DM 7 (beneath the list of seven criteria) to reflect the importance of exceptional cases such as the Proposed Development:

*“It is recognised that there are exceptional cases where the benefits of delivering a particular development are so great. Therefore, in the case of plan-led comprehensive new settlements, this policy will not apply.”*

Yours sincerely



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cc. Andy Jarrett, Otterpool Park LLP  
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