

Report to	<b>South Downs National Park Authority</b>
Date	<b>18 September 2012</b>
By	<b>Director of Planning</b>
Title of Report	<b>Modifications to Joint Hampshire Minerals and Waste Plan</b>
Purpose of Report	<b>To seek agreement from the National Park Authority that the modifications to the Joint Hampshire Minerals and Waste Plan be approved and published for public comment.</b>

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**Recommendation: This report was considered by the South Downs National Park Authority (SDNPA) Planning Committee on 13 September 2012. At the Planning Committee meeting it was recommended to the SDNPA that:**

- 1) the proposed changes to the Hampshire Minerals and Waste Plan (HMWP) be agreed;**
- 2) that a schedule of the proposed changes be published and comments invited on their 'soundness' for submission to the Inspector;**
- 3) that authority be delegated to the Director of Planning, in consultation with the Chair of the Planning Committee, to formally request, if necessary, of the Planning Inspector that the Public Examination process be suspended and/or undertake other procedural action as necessary in order to safeguard the Plan until revocation of the South East Plan has been completed.**

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## **I. Introduction and Summary**

- I.1 The joint Draft Hampshire Minerals and Waste Plan was approved for publication, consultation and subsequent submission to the Government by the South Downs National Park Authority at its meeting on 25 October 2011. Following approval by the partner authorities and a subsequent public consultation the Hampshire Minerals and Waste Plan (HMWP) was submitted to Government on 29 February 2012.
- I.2 The Planning Inspector has conducted the first stage of the Public Examination of the HMWP and has now asked the authorities to review specific elements of the Plan with a view to proposing changes to ensure that the plan is 'sound' – that is, positively prepared, justified, effective and consistent with national policy. These changes will then be subject to a public consultation on their soundness.
- I.3 Similarly, informal discussion with the Planning Inspector has provided helpful guidance on ensuring that any proposed changes are sound, especially in relation to new national policy.
- I.4 In considering the elements of the HMWP the Inspector suggested for review, the outcomes from the first stage of the public examination have been used. As the plan preparation process is essentially iterative in nature, updates and amendments are to be expected and officers are content that the review has taken into account both the legal and planning advice and dealt with any new evidence which arose as a consequence of the first stage of the process.
- I.5 A number of changes to the HMWP are proposed; many are minor in nature, however, where the changes are more significant and exceed the delegation afforded the Director of Planning in consultation with the Chair of the Planning Committee, they are now brought to the attention of Members for approval, following consideration by the Planning Committee.

- 1.6 A detailed schedule highlighting all the proposed changes has been prepared, and copies of this have been made available in the Members room, hard copy on request and on the web at <http://consult.hants.gov.uk/portal>.
- 1.7 A summary of the main changes of relevance to the South Downs National Park Authority (SDNPA) is provided in section 4 of this report. A summary of the other main changes is included in **Appendix I**.
- 1.8 This paper seeks to:
- update the SDNPA on progress of preparing the Hampshire Minerals and Waste Plan;
  - summarise the outcomes of the Public Hearing;
  - identify the potential changes to the HMWP identified as a consequence of the discussion at the hearing to ensure it is sound;
  - request authority to publish and consult on the schedule of changes;
  - identify the next steps in the plan preparation process; and
  - clarify the position of the HMWP with respect to the intended revocation of the South East Plan.

## **2. Background**

- 2.1 The SDNPA is working in partnership with Hampshire County Council, Southampton City Council, Portsmouth City Council, the New Forest National Park Authority to prepare the Hampshire Minerals and Waste Plan to manage minerals and waste development to 2030.
- 2.2 Current policy for minerals and waste development in the part of the SDNP in Hampshire is derived from the Minerals and Waste Core Strategy which was adopted in 2007. This policy document now requires updating to take account of new national policy. In addition, the HMWP aims to significantly strengthen the protection it affords Hampshire's environment and communities and provide robust direction for business.
- 2.3 The draft HWMP was prepared using technical evidence and responses to various public consultations gathered over several years.
- 2.4 On 25 October 2011, the SDNPA resolved to publish the HMWP for comment on its 'soundness' – that is, is the plan justified, effective and consistent with national policy.
- 2.5 From 7 November 2011 until 19 December 2011, a total of 1,912 representations were received. Following this, some minor changes were made to the plan, which was then submitted to government on 29 February 2012.

## **3. Public Examination and Hearing**

- 3.1 As part of his public examination of the HMWP the Planning Inspector convened a public hearing from 6 to 15 June 2012, where he invited participants to comment and discuss their views on the soundness of the Plan.
- 3.2 At the Hearing the Inspector prepared a programme whereby all aspects of the HMWP were covered. At his invitation, participants highlighted the elements of the Plan they felt were not sound; the Inspector then provided an opportunity for the planning authorities to respond and where appropriate offer to review those elements of the HMWP. The hearing was adjourned by the Inspector on 15 June.
- 3.3 The Inspector noted that there are several parts of the plan that require attention to ensure that it is sound. There are two types of changes; minor (such as typing errors, matters of clarification or policy consolidation), and more significant changes. Under the terms of the previous resolutions of the SDNPA, and partner authorities, minor changes can be dealt with under delegated authority, but more significant changes, such as amendments to policies or sites, require consideration by the SDNPA and its equivalent arrangements amongst the partners.
- 3.4 These range from those changes required due to the introduction of the National Planning Policy Framework (NPPF) (which was published after the plan was submitted), or due to new information that came to light as a consequence of stakeholder involvement at the

Hearing. The Inspector has also indicated that the Planning Authorities should review elements of the HMWP based on his consideration of the evidence to date.

3.5 The elements of the HMWP requiring more significant review of relevance to the SDNP include:

- The National Planning Policy Framework (NPPF) sets out the presumption in favour of sustainable development, and the Inspector has advised that he wishes to see a similar policy in the HMWP;
- Following the submission of new evidence to the Inspector by the operator of Kingsley Quarry in East Hampshire, to the effect that the mineral should be classified as silica sand, an industrial mineral, the Inspector has asked that the planning authorities review the HMWP in relation to the provision for silica sand, to ensure that it is in accordance with NPPF. The operator has promoted an extension to Kingsley Quarry which is within the SDNP.

3.6 Other elements requiring review related to the shortfall in aggregate provision at the end of the plan period and provision of additional sites, the findings of the Integrated Sustainability Appraisal (ISA) on extension sites for land-won sand and gravel, the Michelmersh Brickworks, and a challenge by the New Forest District Council relating to Policy 33 (safeguarding wharves).

3.7 Despite Government commitments to early revocation, at the time of writing, the South East Plan remains extant. The Government has stated on numerous occasions its intention to revoke regional spatial strategies (RSS's), including the South East Plan, which was adopted in 2009.

3.8 In July the Department for Communities and Local Government reaffirmed the Government's commitment to removing the South East Plan. Nevertheless, until the South East Plan is revoked, the legal requirement for the HMWP to be in 'general conformity' with the South East Plan remains. This is a concern, as the South East Plan itself is inconsistent with the NPPF and is based on out of date aggregate apportionment assumptions, thus causing a legal issue for the HMWP.

3.9 The Inspector has asked the planning authorities to prepare a schedule of all those changes to the HMWP they consider necessary to ensure the HMWP is sound following the discussions at the Hearing, in readiness to consult on these changes at a later date.

#### **4. Changes to the Hampshire Minerals and Waste Plan**

4.1 Following the Inspector's advice to review elements of the HMWP, the planning authorities have considered these points.

4.2 A schedule of proposed changes has been prepared. This details all the changes to the HMWP considered to be required. Many of these changes are minor in nature such as typographic, formatting or policy consolidation changes; these are classed as 'additional changes'. Those proposed changes that are more significant are separately identified as 'main changes'.

4.3 The changes have been shared with the Planning Inspector and he has not raised any issues with them. However this is merely informal discussion, his report will only be compiled once the public consultation on the changes has been completed.

4.4 The full schedule is available in the Members room, hard copy on request and also on the web at <http://consult.hants.gov.uk/portal>. A shortened version of the schedule, detailing the changes relating to the SDNP is included at **Appendix 2**.

4.5 A summary of those changes considered to affect the integrity of the HMWP (classed as 'main changes') of relevance to the SDNP is provided below. The full summary of main changes is provided in **Appendix 1**.

#### **CHANGE 3 (dC23) New Policy 1 - Sustainable Minerals and Waste Development**

4.6 The HMWP clearly states its aim to protect Hampshire's environment, maintain Hampshire's communities and support Hampshire's economy.

- 4.7 The National Planning Policy Framework (NPPF) was issued on 27 March 2012, following the submission of the HMWP on 29 February 2012. The Inspector considered that following advice from the Department for Communities and Local Government, the guidance contained within the NPPF regarding the presumption in favour of sustainable development should be included in the plan.
- 4.8 The NPPF states *“the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For plan-making this means that local planning authorities should positively seek opportunities to meet the development needs of their area; Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.”*
- 4.9 Providing it is made clear that a local interpretation of this policy for Hampshire is devised through additional supporting text, and the inclusion of a footnote which relates to the fact that the presumption in favour will not apply if there are specific policies in the NPPF that restrict development, such as policies relating to the protection of National Parks, then the policy wording will ensure protection for the SDNP.
- 4.10 It is recommended that change dC23 be made to the HMWP in order to bring this guidance into effect.
- 4.11 It is further recommended that this forms part of the public consultation during the next stage of the process.

#### **CHANGE 4 (dC28) Revise policy on designated landscapes**

- 4.12 The policy on protection of designated landscapes, such as the National Parks and AONB’s has been amended to ensure that HMWP is consistent with national policy. The proposed wording is now more consistent with the other joint minerals and waste plans – recognising the difference between major and small-scale developments. A footnote has been added to define major development.

#### **CHANGE 10 (dC97) new Policy 21 – Silica sand**

- 4.13 As part of the preparation for the public hearing, the operator of Kingsley Quarry in East Hampshire provided evidence to the Inspector that stated that the mineral at that quarry was silica sand based on its uses. Despite several opportunities and ongoing dialogue with the operator, this information has never previously been submitted the planning authorities at any stage of the process.
- 4.14 Silica sand is a particular high quality type of sand that has a very high Silica (SiO<sub>2</sub>) content, such that it can be used in industrial processes, specifically for glass-making.
- 4.15 In this regard, mineral deposits of this type enjoy a different and more stringent planning protection than those types of sand and gravel which are used for construction.
- 4.16 The NPPF states that *“Minerals planning authorities should plan for a steady and adequate supply of industrial minerals by co-operating with neighbouring and more distant authorities to co-ordinate the planning of industrial minerals to ensure adequate provision is made to support their likely use in industrial and manufacturing processes by providing a stock of permitted reserves of at least 10 years for individual silica sand sites to support the level of actual and proposed investment required for new or existing plant and the maintenance and improvement of existing plant and equipment”*
- 4.17 The Inspector has requested that the planning authorities review the HMWP to make provision for silica sand in accordance with the NPPF.
- 4.18 The technical guidance to the NPPF provides helpful advice by defining industrial minerals, and clarifying that silica sand is a mineral *“necessary to support industrial and manufacturing processes”*.
- 4.19 Furthermore it identifies the method by which the landbank for a silica sand site is calculated; the average of the last three years for which sales are available.

- 4.20 It is accepted that the mineral extracted from Kingsley Quarry and potentially other sites in the vicinity, satisfy the physiochemical properties of silica sand and that the mineral extracted from the site is used for both construction and non-construction uses.
- 4.21 The NPPF clearly equates the protection afforded silica sand sites, to the need for its use as an industrial mineral. The sand from Kingsley Quarry is not used for industrial uses, but predominantly used for recreation and horticulture with a minority used for construction.
- 4.22 To that end, it is suggested that:
- a new policy on silica sand is included in the HMWP (new Policy 21)
  - the status of the current Frith End and Kingsley sites are amended to include reference to silica sand
  - the levels of supply of soft sand (aggregate) for construction be revised accordingly.
- 4.23 The operator of Kingsley Quarry has also been promoting an extension to the current site, within the SDNP, however this was not allocated as a sustainable extension site in the HMWP.
- 4.24 This remains the case as, in the view of the planning authorities there is no need for an extension to the current site; the site already has a landbank in excess of the NPPF requirement.
- 4.25 The operational extraction site at Frith End, East Hampshire produces similar material to the Kingsley site and the operator has confirmed that not only does the material satisfy the physical requirements of Silica sand, but it is also used for similar purposes such as recreation and horticulture as the Kingsley Quarry material.
- 4.26 Therefore in accordance with paragraph 146 of the NPPF, it is suggested that a new Policy 21 – Silica sand, is inserted into the HMWP which incorporates criteria to guide further silica sand development.
- 4.27 It is further recommended that this forms part of the public consultation during the next stage of the process.

### **CHANGE 13 (dCI42, dCI43, dCI44) Clarification on location of waste management development**

- 4.28 The policy and supporting text on locating waste management development has been revised as a consequence of the hearing sessions to provide greater clarity and strengthen the guidance for a wider range of waste management land uses. The broad locations for waste management development are illustrated on the key diagram and exclude the SDNP. However, the final part of revised Policy 29 would allow development in other locations, provided that criteria i) and ii) are met. If a proposal was also located in the SDNP, it would also be required to be in accordance with Policy 4.

## **5. General Conformity and the South East Plan**

- 5.1 The Planning and Compulsory Purchase Act 2004 (as amended) requires a planning authority to prepare a local plan which is in 'general conformity' with the Regional Spatial Strategy; in our case the South East Plan.
- 5.2 The Government has made it clear on numerous occasions, including a statement from DCLG Minister, Baroness Hanham, on 25 July 2012, that it intends to revoke the South East Plan. However, at the time of writing, the South East Plan is still extant.
- 5.3 The Inspector decided to progress with the Public Examination of the HMWP on the basis that the South East Plan was intended to be revoked. During the hearing he examined the planning authorities arguments as to the flaws in the South East Plan policies.
- 5.4 As Hampshire County Council has spent several years opposing the requirements of the South East Plan on the basis that those requirements are out of date, there was considerable, robust and up to date evidence available to promote this argument.
- 5.5 The Inspector has asked for the proposed changes necessary to ensure that the HMWP is sound be identified. The schedule of draft proposed changes do not include changes to

policy to reflect the South East Plan requirements. If agreed by Members the changes will form the basis of the forthcoming consultation that will also be carried out on the basis that the case for departure from the South East Plan requirements has been made.

- 5.6 Following the consultation and any subsequent hearings, the next stage of the process, requires the Planning Inspector to report his findings on the soundness of the HMWP.
- 5.7 Should the South East Plan remain extant at that time, due to the legal general conformity requirement, there is a risk of an unsound judgement by the Inspector.
- 5.8 An unsound plan has to be abandoned, or be restarted at an earlier stage of the process, with changes proposed to make it sound.
- 5.9 Therefore, it is suggested that if this situation occurs then a formal request should be made to the Inspector for the Public Examination into the HMWP to be suspended, to allow for the revocation of the South East Plan. This will allow the soundness of the Plan to be judged without reference to the general conformity issues.
- 5.10 When the NPPF was brought into force, transitional provisions for 12 months were allowed for local planning authorities to adapt their policies accordingly. It seems reasonable to suggest that the South East Plan will also be revoked by that time.
- 5.11 Therefore it is suggested that authority is given to seek a suspension of the Public Examination at that stage, to allow the plan to proceed once the South East Plan revocation is completed. Since the timing of any suspension request will be dependent on the Government's progress in revoking the South East Plan, and the support of the Planning Inspectorate, the opportune time may not coincide with a programmed meeting. Therefore delegated approval will be sought from the SDNPA to allow timely action on behalf of SDNPA in this matter.

## **6. Next Steps**

- 6.1 It is intended to publish the full schedule of changes and the revised version of the HMWP for public consultation limited to the proposed changes only.
- 6.2 The representations received would then be collated, analysed and a report compiled which would be presented to the Inspector in due course.
- 6.3 Once the Inspector has the representations and the report, he may wish to reconvene the Hearings which were adjourned on 15 June 2012.
- 6.4 Otherwise, pending the revocation of the South East Plan and any temporary suspension of the Examination he will then finalise his report on the soundness of the HMWP, and submit this to the Planning Authorities.

## **7. Recommendations**

- 7.1 It is recommended that:
  - the proposed changes to the Hampshire Minerals and Waste Plan be agreed;
  - a schedule of the proposed changes be published and comments invited on their 'soundness' for submission to the Inspector;
  - authority be delegated to the Director of Planning, in consultation with the Chair of the Planning Committee, to formally request, if necessary, of the Planning Inspector that the Public Examination process be suspended and/or undertake other procedural action necessary, to safeguard the Plan until the revocation of the South East Plan is completed.

## **8. Resources**

- 8.1 The SDNPA have not had any indication from Hampshire County Council that the recommendations in this report would lead to any additional contributions being required from the SDNPA towards the cost of the Plan production.

## **9. Risk management**

- 9.1 Risk: If the Plan making process continues without delay and the South East Plan remains extant, then it is a certainty that the Inspector will find the HMWP unsound, and the SDNPA

will be unable to adopt the HMWP. It will not even be a material consideration for planning decisions. In this case the options are to abandon the Plan or to start the plan making process again.

- 9.2 Mitigation: The option to request that the process be suspended would safeguard the Plan until revocation of the South East Plan is completed.
- 9.3 Risk: If the process is delayed significantly then the Inspector may demand that an updating of the evidence base is required. This is not a significant risk but may provide a further delay to reporting and adoption proceedings.
- 9.4 Mitigation: None, as the benefits of delay are likely to outweigh the risk.

## **10. Crime and Disorder Implication**

- 10.1 It is considered that the proposal does not raise any crime and disorder implications.

## **11. Human Rights Implications**

- 11.1 This report has been considered in light of statute and case law and any interference with an individual's human rights is considered to be proportionate to the aims sought to be realised.

## **12. Equalities Act 2010**

- 12.1 Due regard, where relevant, has been taken to the South Downs National Park Authority's equality duty as contained within the Equalities Act 2010.

## **13. External Consultees**

- 13.1 If no external Consultees, please state none.

### **TIM SLANEY Director of Planning**

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Appendices	Appendix 1: Summary of the main changes Appendix 2: Summary schedule of main changes of relevance to the SDNP
SDNPA Consultees	Chief Executive Officer, Director of Corporate Services, Director of Planning, Director of Strategy and Partnerships, Head of Operations, Chief Finance Officer, Deputy Chief Finance Officer, Monitoring Officer & Legal Services.
Background Documents	South Downs National Park Authority Report (25/10/11) - Draft Hampshire, Portsmouth, Southampton, New Forest and South Downs National Park Minerals and Waste Plan Planning Committee Report (13/10/11) - Draft Hampshire, Portsmouth, Southampton, New Forest and South Downs National Park Minerals and Waste Plan Planning Committee Report (13/06/11) - Joint Working Protocol Planning Committee Report (13/06/11) – Have Your Say Addendum Consultation Planning Committee Report (14/02/11) – Have Your Say consultation Planning Committee Report (8/11/10) – Principle of joint working with Hampshire County Council