

# **Report to East Sussex County Council, South Downs National Park Authority and Brighton & Hove City Council**

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Inspectors appointed by the Secretary of State

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Planning and Compulsory Purchase Act 2004 (as amended)

Section 20

## **Report on the Examination of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan Revised Policies Proposed Submission Consultation Document September 2021**

The Plan was submitted for examination on 13 May 2022

The examination hearings were held on 8 and 9 November 2022

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## Abbreviations Used in this Report

|        |   |
|--------|---|
| ADTP   | Aggregates Data Technical Paper                   |
| AONB   | Area of Outstanding Natural Beauty                |
| HRA    | Habitats Regulations Assessment                   |
| LAA    | Local Aggregates Assessment                       |
| HWAONB | High Weald Area of Outstanding Natural Beauty     |
| NPPF   | National Planning Policy Framework September 2023 |
| NPPW   | National Planning Policy for Waste                |
| MCAs   | Mineral Consultation Areas                        |
| MPA    | Minerals Planning Authority                       |
| mtpa   | Million tonnes per annum                          |
| MSAs   | Mineral Safeguarding Areas                        |
| MSPG   | Mineral Safeguarding Practice Guidance            |
| PPG    | Planning Practice Guidance                        |
| SAC    | Special Area of Conservation                      |
| SDNP   | South Downs National Park                         |
| SEEAWP | South-East England Aggregates Working Party       |
| SEWPAG | South-East England Waste Planning Advisory Group  |
| SOCG   | Statement of Common Ground                        |
| SPA    | Special Protection Area                           |
| SRN    | Strategic Road Network                            |
| SSSI   | Site of Special Scientific Interest               |
| WMP    | Waste and Minerals Plan 2013                      |
| WMSP   | Waste and Mineral Sites Plan 2017                 |
| WMLP   | Waste and Minerals Local Plan                     |
| WPA    | Waste Planning Authority                          |

## Non-Technical Summary

This report concludes that the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan Revised Policies Proposed Submission Consultation Document September 2021 (the Plan) provides an appropriate basis for the planning of waste and minerals in the County of East Sussex, part of the South Downs National Park and Brighton & Hove provided that a number of main modifications (MMs) are made to it. East Sussex County Council, the South Downs National Park Authority and Brighton & Hove City Council (the Authorities), as joint Mineral Planning Authorities (MPAs) and joint Waste Planning Authorities (WPAs), have specifically requested that we recommend any MMs necessary to enable the Plan to be adopted.

Following the hearings, the Authorities prepared schedules of the proposed modifications and, carried out sustainability appraisal (SA) and habitats regulations assessment (HRA) on them. The MMs were subject to public consultation over an eight-week period. In some cases, we have amended their detailed wording and/or added consequential modifications where necessary. We have recommended their inclusion in the Plan after considering the sustainability appraisal and habitats regulations assessment and all the representations made in response to consultation on them.

The MMs can be summarised as follows:

- A number of modifications to ensure the Plan period of the policies in the Plan is aligned with that of the vision, objectives and strategic policies.
- Modifications to Minerals Safeguarding Area and Mineral Consultation Area Policies to ensure they are justified and effective.
- Modifications to ensure the development management Policy is clearly written without ambiguity so that decision makers and developers can understand how to react to it.
- A range of modifications to the monitoring framework to clearly specify triggers and associated action necessary if the Plan is not delivering outcomes as expected.
- A number of other modifications to ensure that the Plan is positively prepared, justified, effective and consistent with national policy.

## Introduction

1. This report contains our assessment of the Plan in terms of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate. It then considers whether the Plan is compliant with the legal requirements and whether it is sound.
2. On the 19 December 2023 the Secretary of State for Levelling Up, Housing and Communities published its revised National Planning Policy Framework (NPPF) alongside other revisions to national policy. Paragraph 230 of that document indicates that the Plan should be examined against the version of the NPPF published on 5 September 2023. Therefore, when we refer to the NPPF in our report, we are referring to that published on the 5 September 2023. However, the Plan cross references specific paragraphs of the NPPF in places. Some of the MMs<sup>1</sup> consulted upon have therefore been adjusted to ensure they reference the correct paragraph numbers and the version of the NPPF published on 19 December 2023. We have had regard to all relevant national policies and statements in preparing this report.
3. The NPPF (paragraph 35) explains that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy. The starting point for the examination is the assumption that the Authorities have submitted what they consider to be a sound Plan. The Plan, submitted in May 2022 (R-RP02) is the basis for our examination. It is the same document as was published for consultation in September 2021.

## Main Modifications

4. In accordance with section 20(7C) of the 2004 Act the Authorities have requested that we should recommend any MMs necessary to rectify matters that make the Plan unsound and /or not legally compliant and thus incapable of being adopted. Our report explains why the recommended MMs are necessary. The MMs are referenced in bold in the report in the form **MM1**, **MM2** etc, and are set out in full in the Appendix.
5. Following the examination hearings, the Authorities prepared a schedule of proposed MMs and carried out SA and HRA of them. The MM schedule was subject to public consultation for eight weeks. We have taken account of the consultation responses in coming to our conclusions in this report. None of the amendments to the detailed wording of the MMs as described in paragraph 2 of this report significantly alters the content of the modifications as published for

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<sup>1</sup> **MM02, MM05, MM07, MM08, MM09, MM10, MM12**

consultation or undermines the participatory processes and SA or HRA that has been undertaken.

6. This report does not explain the detailed content and precise wording of every MM. This can be found in the Appendix to this report. However, it does refer to the most salient matters in explaining why a MM is necessary in order for the Plan to meet the test of soundness or be legally compliant.

## **Policies Map**

7. The Authorities must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted Development Plan. When submitting a Local Plan for examination, the Authorities are required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted Local Plan.
8. In this case, the submission policies map comprises the set of plans identified in the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan Revised Policies Local Policies Map October 2021 (R-LPM02) and the plan identified as Revised Policies Local Policies Map (Amendments) (Addendum) (May 2022) – Replacement Map for map RSA/D Shoreham (R-LPM02A-RSA-D-2). For the avoidance of doubt, when we refer to the submission policies map in our report, we are referring to both of these documents unless explicitly indicated otherwise.
9. The policies map is not defined in statute as a development plan document and so we do not have the power to recommend MMs to it. However, a number of the published MMs to the Plan's policies require further corresponding changes to be made to the policies map. In addition, there are some instances where the geographic illustration of policies on the submission policies map is not justified and changes to the policies map are needed to ensure that the relevant policies are effective. These further changes to the policies map were published for consultation alongside the MMs in a Schedule of Policy Map Modifications (MM-PM01).
10. When the Plan is adopted, in order to comply with the legislation and give effect to the Plan's policies, the Authorities will need to update their adopted policies map to include all the changes proposed in MM-PM01.

## **Context and Scope of the Plan**

11. The adopted East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan (WMLP) comprises the Waste and Minerals Plan (2013) (WMP) and the Waste and Mineral Sites Plan (2017) (WMSP). The Plan seeks

to amend (replace, add to or modify) specific policies and text contained within these adopted development plan documents. The Plan is therefore a partial review of the existing Development Plan and once adopted will form part of the adopted Development Plan for the Authorities replacing, adding to or modifying specific parts of the WMP or WMSP.

12. The Plan is focussed on the review of minerals provision and safeguarding of mineral resources and facilities, particularly for aggregate minerals. In addition, it reviews one minerals and waste development management policy and a single policy concerned with managing waste development proposals. It is only these matters which are within the scope of the examination. Any other matters detailed in the WMP or the WMSP, such as the capacity for waste management, are not dealt with in the Plan as they are not being reviewed by the Authorities at this time. Such matters are therefore not before us and have not been considered during the examination or in our report.
13. The Plan area covers the administrative areas of East Sussex County Council and Brighton & Hove City Council, along with the part of the South Downs National Park (SDNP) that falls within East Sussex and Brighton & Hove. In 2017, the Plan area had a population of approximately 840,000 people.
14. Two thirds of the Plan area is covered by the South Downs National Park (SDNP) and the High Weald Area of Outstanding Natural Beauty (HWAONB). In November 2023 Area of Outstanding Natural Beauty (AONB) was renamed as National Landscapes. However, these areas remain AONB insofar as all policy, legislation and guidance applies to the designated landscape. We continue to refer to AONB in this report reflecting the Plan as modified.
15. To the east of the Plan area is the Dungeness, Romney Marsh and Rye Bay Special Protection Area (SPA), Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) designated for their ecological and geological interest.
16. Environmental constraints have historically influenced low levels of 'land-won' aggregate production in the Plan area. Imports of aggregates extracted from the seabed (marine dredged aggregates) and crushed rock have therefore been necessary to meet local construction needs.

## **Public Sector Equality Duty**

17. Through the examination, we have had due regard to the aims expressed in S149(1) of the Equality Act 2010. The Equality Impact Assessment and Outcome Assessment (R-EQ02) demonstrates that the Plan does not lead to any adverse impacts or cause discrimination to any particular groups with protected characteristics within the Plan area.



18. No issues have been detected that would be likely to impinge upon the three aims of the Equality Act 2010 to eliminate discrimination, advance equality of opportunity and foster good relations or affect persons of relevant protected characteristics of age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. Overall, we have no reason to question the conclusions of R-EQ02.

## **Assessment of Duty to Co-operate**

19. Section 20(5)(c) of the 2004 Act requires that we consider whether the Authorities have complied with any duty imposed on them by section 33A in respect of the Plan's preparation. Details of how the Authorities have met this duty are set out in the Duty to Co-operate Statement, Statements of Common Ground (SOCG) (R-DTCS01 & R-DTCS01.2) and the Authorities written responses to pre-hearing questions. These documents set out where, when, with whom and on what basis co-operation has taken place over all relevant strategic matters.
20. The evidence demonstrates that throughout the plan-making process the Authorities have worked closely with all prescribed bodies, including neighbouring MPAs, as well as some further afield where a strategic relationship was identified. It also shows the Authorities have worked closely with the South-East England Aggregates Working Party (SEAWP) and the South-East England Waste Planning Advisory Group (SEWPAG).
21. R-DTCS01 identifies, minerals provision, the cross-boundary supply of aggregates (excluding soft sand), the cross-boundary supply of soft sand, the safeguarding of minerals resources infrastructure and biodiversity net gain as strategic matters. These reasonably cover the scope of the Plan and the Authorities evidence includes records of numerous meetings, joint evidence and signed SOCGs that demonstrate the Authorities engagement with the prescribed bodies has been constructive, active and ongoing throughout the plan-making process. We are therefore satisfied that the duty to co-operate has been met.

## **Assessment of Other Aspects of Legal Compliance**

### **Local Development Scheme**

22. The Plan has been prepared in accordance with each of the Authorities' Local Development Schemes (ES-LDS22, SD-LDS22 and BH-LDS22). These were updated during the examination to take account of delays caused by COVID-19, a longer examination than expected and to include consistent details with

regard to the timetable and scope of the review of the Plan and the WMLP (ES-LDS23.07, SD-LDS22.10 and BH-LDS23.03).

## **Public Consultation and Engagement**

23. The Consultation Statement May 2022 (R-CS01) summarises the consultation and engagement undertaken and explains how the response has informed the Plan. Consultation on the Plan and the MMs was carried out in compliance with the Council's Statements of Community Involvement (ES-SCI22, SD-SCI22 and BH-SCI22) and Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations).

## **Sustainability Appraisal**

24. The Authorities have carried out a SA of the Plan (R-SA02 and R-SA02A). They have prepared a report and technical annex of the findings of the appraisal and published it along with the Plan and other submission documents under regulation 19. The SA report and technical annex were updated to assess the MMs (R-SA07). Overall, we are satisfied that the SA was proportionate, objective, underpinned by relevant and up to date evidence, and is compliant with legal requirements and national guidance.

## **Habitats Regulations Assessment**

25. The Plan was subject to a HRA during its preparation (R-HR02) as required by the Conservation of Habitats and Species Regulations 2017 (as amended). The HRA identifies that the Plan is compliant with the Habitats Regulations. It concludes the Plan will not result in likely significant effects on any European Sites, specifically the Ashdown Forest SAC and SPA, the Dungeness SAC, Romney Marsh and Rye Bay SPA, Dungeness Romney Marsh Rye Bay Ramsar, the Hastings Cliffs SA, Pevensey Levels SAC and Ramsar site, the Castel Hill SAC, and the Lewes Downs SAC. The MMs have also been subject to HRA (R-HR03) reaching the same conclusions.

## **Climate Change**

26. Section 19(1A) of the 2004 Act requires that development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the Plan area contribute to the mitigation of, and adaptation to, climate change. The Plan includes objectives and policies designed to secure that mineral development and use of land for such purposes within the Plan area contribute to the mitigation of, and adaptation to, climate change (Policies RM0, RM1, and RM2). Furthermore, Policy WMP24a of the WMP, explicitly requires proposals for minerals or waste management development to take account of climate change mitigation and adaptation. We are therefore

satisfied the Plan as part of the Development Plan, meets the requirements of Section 19(1A) of the 2004 Act.

## **Superseded Policies**

27. Regulation 8(5) of the 2012 Regulations sets out that where plans contain certain policies that are intended to supersede other policies in the adopted Development Plan, this fact should be stated, and the superseded policies must be identified. Section 9 of the Plan includes a table which summarises all the amendments to the WMP and WMSP and explicitly states which policies are to be superseded or replaced by new policies in the Plan upon adoption. This requirement has therefore been met.

## **Other Legal Requirements**

28. The Plan complies with all other relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.

## **Conclusion**

29. We therefore conclude that all relevant legal requirements have been complied with during the preparation of the Plan.

## **Assessment of Soundness**

### **Main Issues**

30. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings, we have identified seven main issues upon which the soundness of the Plan depends. This report deals with these main issues. It does not respond to every point or issue raised by representors. Nor does it refer to every policy criterion or designation in the Plan.

### **Issue 1 – Whether the overarching strategy as amended by the Plan is justified, effective and consistent with national policy?**

#### **Scope of the Plan and its relationship with the WMLP**

31. The Inspector examining the WMSP concluded among other things that the rate of land-won aggregates detailed in the WMP could not be maintained by the sites allocated, finding that a review of the approach to minerals provision and minerals sites was needed before the end of the WMLP Plan period, particularly with regard to aggregates. The Plan is a partial review of the WMLP which

seeks to respond to those findings. It does this considering updated evidence, particularly that related to aggregate demand and supply and environmental constraints which are explained in detail below under the relevant main issues.

32. The Plan also reflects ongoing joint working relationships between the Authorities and the Minerals and Waste Planning Authorities adjoining the Plan area or affected by the WMLP or its review. In light of this and the agreed SOCGs between the relevant Authorities, the Plan proposes that the section titled "Local Strategy Statement", on pages 25-32 of the WMP, be deleted upon adoption of the Plan. The Authorities consider that this topic is now addressed through the latest SOCGs and is therefore no longer necessary. The Authorities approach in respect of this matter is justified.
33. However, the Plan will be a separate document that can only be read alongside the WMLP. As currently written, the explanation of this relationship in the Plan is ambiguous and somewhat confusing. This would be avoided, if the relationship between the Plan and the WMLP was more clearly explained in justification text in the Plan in the interests of effectiveness. For the same reasons and for the avoidance of any doubt associated with the effect of adopting the Plan, the table in the 'Summary of Policy Review' section of the Plan should explain the impact of adoption on each existing Policy of the WMLP. Furthermore, to ensure consistency with paragraphs 20 to 23 of the NPPF it is also necessary to make clear that all of the Policies in the Plan are Strategic Policies.
34. The WMLP Plan period is 2013 to 2030. It sets out a 'A vision for the Plan Area up to 2030' which the Policies of the WMLP are intended to deliver. However, paragraph 1.3 of the Plan says the Plan period is 2019-2034. This would mean the new Policies or those replaced or altered by the Plan on adoption would have a different and longer plan period than the components of or Policies of the WMLP which would be unaltered by the adoption of the Plan. Particularly, the Policies detailed in the Plan would not be aligned to the WMLP lifespan or its overarching vision and objectives.
35. As explained in further detail below, the Policies of the Plan are not designed to anticipate or respond to long term requirements or opportunities. Instead, they are in response to the significant environmental constraints facing the Plan area and the Authorities current understanding of aggregate supply and demand. Reflecting this and recognising the narrow scope and the intended purpose of the Plan as explained above, the Authorities have committed to an immediate full review of the WMLP. They anticipate such would be adopted as soon as 2027 (ES-LDS23.07, SD-LDS22.10 and BH-LDS23.03).
36. Therefore, even though the Policies of the Plan are intended to look ahead a minimum of fifteen years from adoption seeking consistency with paragraph 22

of the NPPF, they can only be read in conjunction with the WMLP and its overarching vision, objectives and strategic direction. Although, we accept these are now of some age, these are not being comprehensively reviewed at this time and are not within the scope of this Plan.

37. Having regard to all these factors, the Plan period is not justified or effective. MMs are therefore needed to align it with the WMLP Plan period, its vision, objectives, strategic direction and evidence base.
38. **MM01** addresses all these issues, through changes to the 'Introduction' and 'Summary of Policy Review' sections of the Plan and is needed in the interests of justification and effectiveness. Thus, subject to **MM01**, pragmatically, the approach, purpose, scope and relationship between the Plan and the WMLP is clear and soundly based.

### **Mineral and Waste Development and the SDNP (Policy RV1)**

39. Paragraph 176 of the NPPF states great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and AONB which have the highest status of protection in relation to these issues. The SDNP and HWAONB covering two thirds of the Plan area therefore have a significant influence on the minerals and waste strategy.
40. Policy RV1 and the associated justification text replaces Policy WMP2 of the WMP which is an overarching strategic policy concerned with minerals and waste development affecting the SDNP. However, Policy RV1 justifiably and accurately references to the HWAONB whereas Policy WMP2 of the WMP does not.
41. Unlike Policy WMP2 of the WMLP, Policy RV1 of the Plan does not include any criteria relating to the extension of existing soft sand quarries or new quarries in the SDNP whereas Policy WMP2 does. As such, Policy RV1 provides a more restrictive approach to major minerals and waste development in the SDNP and HWAONB, and states that no provision will be made for such development in these areas in the Plan period other than in exceptional circumstances where it can be demonstrated to be in the public interest. This matter is explained in more detail under issue two below.
42. However, Policy RV1 and the justification text refer to a "designated area" and it is unclear whether such reference relates to the SDNP, the HWAONB or both. Policy RV1 should also be modified to explicitly refer to its geographical extent on the policies map. Moreover, Policy RV1 also makes the distinction between small scale and major development without giving clear definitions for either.

43. **MM02** would address these issues all in the interests of effectiveness. A modification to the Council's submission policies map is also necessary to ensure the identification of the SDNP and HWAONB and its geographical extent is accurate (PM1 and PM2 of MM-PM01).

### **Conclusion on Issue 1**

44. Subject to the MMs identified above Policy RV1 and the associated changes to the justification text of the WMP are justified, effective and consistent with national policy. Consequently, the overarching strategy insofar as it is amended by the Plan is also justified, effective and consistent with national policy.

## **Issue 2 – Whether the Plan would maintain a steady and adequate supply of aggregates?**

### **Sustainable Use of Aggregates (Policy RM0)**

45. Secondary aggregates as by-products of industrial processes and recycled aggregates from materials previously used in construction are both steady sources of supply in the Plan area. The WMLP vision promotes the use of secondary and recycled aggregates in preference to primary mineral resources. However, the Policies contained therein do not specifically prioritise the use of recycled and secondary aggregates over primary extracted aggregates.
46. Policy RM0 is therefore a new Policy which consistent with the vision and paragraph 216 (b) of the NPPF aims to encourage the use of recycled and secondary aggregates over the extraction of primary materials. Policy RM0 therefore provides a more pro-active approach to the use of recycled and secondary aggregates in the Plan area.
47. However, Policy RM0 refers to being applicable to “innovative proposals” without defining what these are. This reference is unnecessary and instead, all development proposals should rightly seek to prioritise the use of recycled and secondary aggregates and adhere to Policy RM0 where possible. Furthermore, Policy RM0 does not specify how development proposals should demonstrate that consideration has been given to the sustainable use of aggregates making it unclear how a decision maker should assess compliance with it or not.
48. **MM04** would address these issues making clear all proposals should maximise use of secondary and recycled aggregates and this should be demonstrated in design and access statements. This MM is necessary in the interests of ensuring consistency with national policy and effectiveness.

## **Provision of Aggregates (Policy RM1)**

49. The permitted sites that contribute to this provision in the Plan area are at Lydd Quarry<sup>2</sup> and Novington Sandpit. Lydd Quarry produces sharp sand and gravel, but, is due to cease production in 2027. However, Novington Sandpit which produces soft sand and has permitted reserves remaining has not been active for a number of years. Novington Sandpit has not therefore been considered as a contributor to future supply. There are no sites producing crushed rock within the Plan area with demand met historically from imports from outside it. Consequently, overall, there is a lack of available land-won aggregate resource within the Plan area.
50. The NPPF looks to MPAs to plan for a steady and adequate supply of aggregates by preparing a Local Aggregates Assessment (LAA) based on a rolling average of ten years' sales data and other relevant local information, and an assessment of all supply options (including marine-dredged, secondary and recycled sources). The approach to the calculation of the future demand and supply for aggregate minerals over the Plan period is set out in the Aggregates Data Technical Paper (ADTP) (R-AG02).
51. The ADTP recognises that the use of sales data to predict future demand makes it difficult to draw robust trend-based conclusions from production and sales data sources. The Authorities have been unable to use aggregate land-won sales figures because of a very small number of sites and significant variations in production levels. In addition, sales data for mineral infrastructure sites in the Plan area has been very limited until relatively recently.
52. The Authorities have therefore based future likely sales demand on "other relevant local information", particularly, the demand for aggregates generated from local planned housing construction. The Authorities estimate the demand for aggregates based on a figure of 400 tonnes of aggregate per dwelling.
53. Following the hearings, the Authorities prepared an Addendum to the ADTP (R-AG07) which considered alternative sources of "other local information" and non-residential construction. It includes a review of the assumptions made in the ADTP (R-AG02), uses the revised Plan period (2019 – 2030) and takes account of new and updated data since the Plan was submitted.
54. The Addendum identifies that the use of future housing growth as a proxy for construction remains robust and ensures adequate aggregate provision for both residential and non-residential construction. There are currently no significant local infrastructure projects within the revised Plan period to 2030. The Authorities estimate that the total provision for the new Plan period is between

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<sup>2</sup> Waste and Minerals Local Plan Review Note regarding Lydd Quarry, August 2023 (R-NOTE01)

17.2 million tonnes and 18.4 million tonnes of aggregates (crushed rock and sand and gravel combined), which averages at between 1.57 and 1.67 mtpa.

55. Overall, we are satisfied, the conclusions of R-AG07 demonstrate that the Authorities methodology remains the most robust and appropriate considering the bespoke local circumstances and the availability of robust data.
56. In terms of future land-won aggregate supply, an extension to Lydd Quarry is the only site that has been promoted through the examination in the Plan area. However, Lydd Quarry is within the Dungeness, Romney Marsh & Rye Bay SSSI which is of national importance for its coastal and wetland habitats and coastal geomorphology. Particularly, among other things, there are known to be subsurface/buried ridges and marsh interface deposits which allow mapping of foreland evolution. The palaeo-environmental information allows for detailed interpretation of environmental conditions at the time of deposition<sup>3</sup>.
57. Therefore, inevitably, any further mineral extraction in this location would be highly likely to have adverse impacts on geomorphology and biodiversity. In such cases paragraph 186 of the NPPF makes clear that where a SSSI is likely to be adversely affected by development, that development should not normally be permitted. Furthermore, it states the only exception is where the benefits of the development in the location proposed clearly outweigh its likely impact on the features of the site that make it of special scientific interest.
58. Given the evidenced lack of potential viable land-won aggregate resources, the extraction of further sharp sand and gravel, at Lydd Quarry, would undoubtedly be a significant benefit. However, the extent of any likely adverse effect on the features of Dungeness, Romney Marsh & Rye Bay SSSI which make it of special scientific interest are unknown. Indeed, Natural England have raised concerns in this regard through the examination and identified that the loss of land to mining operations would result in irreversible impacts to the SSSI interest features which cannot be mitigated, compensated, or reversed.
59. Despite further evidence provided in the examination by the quarry operator, Natural England's concerns remain. In particular, due to a lack of detailed information at this stage, it is not possible to determine the effect of mining operations on the SSSI. Therefore, we concur with the Authorities' view that mineral resources at Lydd Quarry over and above those already permitted cannot be regarded as being environmentally acceptable at this time. Consequently, it would not be appropriate for the Plan to identify any extension to the Lydd Quarry.

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<sup>3</sup> Waste and Minerals Local Plan Review Site Assessment Document, August 2021 (R-SAD01)



60. The Plan acknowledges that, given the lack of viable land-won sites and the scarcity of resources within the Plan area, it is not possible to meet any of the demand for aggregates through land-won extraction and, therefore, approximately 90% of the aggregates to be consumed needs to be imported. Furthermore, it is not possible to make any provision for a landbank of aggregate minerals in the Plan.
61. Apart from current production at Lydd Quarry and road imports, the Plan identifies that aggregate supply will be maintained through a combination of marine dredged sand and gravel imports received through the Ports of Shoreham, Newhaven and Rye and at a rail head at North Quay in Newhaven in addition to sites producing recycled aggregates. The ADTP sets out in detail the available capacity for primary/import/recycled aggregate within the Plan area and concludes that provision can be made with existing permitted import and processing facilities to meet the identified demand for aggregates over the Plan period.
62. In respect of soft sand, the SOCG with Kent County Council, West Sussex County Council, Surrey County Council and Maidstone Borough Council (R-DTCS01.2(B2)) identifies the safeguarding of resources and that soft sand resource within their areas will contribute to the needs of other areas. A steady and adequate supply can be maintained to supply the requirements of the Plan area from the administrative areas of the parties to the SOCG.
63. Despite the lack of availability of land-won aggregates in the Plan area, overall, we are satisfied that the Plan makes adequate provision to meet the identified demand for aggregate minerals over the Plan period.
64. Policy RM1 replaces Policy WMP11 of the WMP. It sets out the requirements for and supply of the aggregates over the Plan period based on the findings of the ADTP. However, in the interests of justification and effectiveness MMs are needed to adjust Policy RM1 to reflect the findings of R-AG07, to reflect the Plan period as modified by **MM01** and set out in justification text the methodology for the calculation of aggregate demand and the approach for maintaining supply. MM is also needed to remove reference to the supply being for consumption in the Plan area as such is not controllable and to ensure consistency with paragraph 213 of the NPPF. All of these matters are addressed by **MM05**.

## Conclusion on Issue 2

65. Subject to the MMs identified above the Plan would maintain a steady and adequate supply of aggregates and the Authorities approach in this regard is justified, effective and consistent with national policy.

### **Issue 3 – Whether the identification of an additional clay extraction area at Aldershaw Farm through a criteria-based policy is justified, effective and consistent with national policy?**

#### **An additional extraction area at Aldershaw Farm (Policy RM2)**

66. Paragraph 214 (c) of the NPPF requires MPSs to plan for a steady and adequate supply of industrial minerals. Policy RM2 is read alongside and supplements Policy WMP13 of the WMP and specifically seeks to ensure that an additional clay extraction area is provided for at an existing clay extraction site known as Aldershaw Tiles at Aldershaw Farm. This is intended to meet the demand for the production of specialist clay tiles. These are used in historic building restoration and the evidence shows reserves for this particular industrial mineral are running low.
67. However, the Aldershaw Tiles site is within the HWAONB, close to ancient woodland and a variety of sites with ecological interest making it a highly sensitive location for clay extraction. It is also accessed from the A21, part of the Strategic Road Network (SRN).
68. Currently there are no clear definitive proposals which specify the exact location for any proposed new extraction area. The evidence<sup>4</sup> shows clay extraction is already taking place sensitively and safely in this location. It also shows that expansion could be undertaken sensitively outside of the relevant buffer zones for ancient woodland subject to detailed assessments and mitigation measures. However, in the absence of detailed working proposals at this stage, it is not possible to determine the effect of mineral extraction on the HWAONB or the ancient woodland with any degree of certainty. Consequently, the Authorities approach in principle to set out a criteria-based policy which supports development at this location rather than an allocation is justified. In this regard, the mineral operator's objective of securing longer term clay supply is not prejudiced by this approach.
69. However, against this background, MMs are necessary to make it explicitly clear that a detailed ecological impact assessment will be required to ensure Natural England are consulted, and that the ecological impacts of any development are mitigated. Policy RM2 should also explicitly specify the need for a Transport Impact Assessment and appropriate mitigation measures. **MM06** would address all of these issues in the interests of effectiveness.

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<sup>4</sup> Waste and Minerals Local Plan Review Site Assessment Document, August 2021 (R-SAD01)

### **Conclusion on Issue 3**

70. Subject to the MM identified above the Plan would provide an appropriate approach to the provision of additional clay extraction at Aldershaw Farm that adequately considers ecological and transport impacts and in this regard is justified, effective and consistent with national policy.

### **Issue 4 – Whether the Plan's approach to minerals safeguarding is justified, effective and consistent with national policy?**

71. In accordance with Paragraph 210 (c) of the NPPF, Policy RM3 defines Mineral Safeguarding Areas (MSAs) and Policy RM7 identifies Minerals Consultation Areas (MCAs). Policies RM3 and RM7 are read together alongside Policies RM4, RM5 and RM6 and collectively safeguard mineral resources and minerals infrastructure (such as facilities, wharves, railheads and batching plant) in the Plan area to avoid minerals sterilisation and/or prejudicing minerals extraction or processing.

#### **Safeguarding Mineral Resources (Policy RM3)**

72. Policy RM3 replaces Policies SP8 and WMP14 of the WMP. Like the policies it replaces it designates MSAs on the policies map where evidence shows potential for land-won mineral resources and seeks to avoid development which could prejudice their extraction. Policy RM3, in contrast to Policies SP8 and WMP14 of the WMP make clear it is concerned only with potentially viable mineral resources, to reflect that the viability of mineral extraction changes over time.
73. The PPG<sup>5</sup> states that safeguarding mineral resources should be defined in designated areas and urban areas where necessary to do so. The supporting text to Policy RM3 identifies that clay sites, permitted gypsum reserves and soft sand resources are safeguarded. There is no MSA identified for sharp sand and gravel because, the evidence shows that there are no potentially viable resources in the Plan area as explained above.
74. The justification text to Policy RM3 sets out categories of excluded development (excluded development) for which the requirements of Policies RM3, RM4, RM5 and RM7 do not apply. This reflects the fact that not all development would prejudice or should be constrained by the presence of potentially viable extractable minerals.
75. However, the relationship between Policies RM3 – RM7, MSAs, MCAs and excluded development is not explicitly clear in the Plan. Furthermore, the list of

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<sup>5</sup> PPG, Minerals, Paragraph: 003 Reference ID: 27-003-20140306, Rev: 06 03 2014

excluded development includes applications for small-scale urban infill development within existing built-up areas i.e., the development of a small gap between existing buildings / enclosed by other types of development. However, without detailed complex definitions this category of excluded development would be open to wide ranging interpretation and in any event the Agent of Change principle should be applied instead.

76. **MM07** would add a table with explanatory information to the justification text of Policy RM3 to clarify these relationships so that decision makers would know how to react to these Policies collectively or in isolation. It would also introduce supporting text to explain the application of the 'Agent of Change' principle, as set out in paragraph 193 of the NPPF and explain the role of District and Borough Authorities in Minerals safeguarding.
77. Overall, subject to **MM07**, which is necessary in the interests of justification, effectiveness and in order to ensure consistency with national policy the Authorities approach with regard to safeguarding mineral resources is sound.

#### **Prior Extraction of Mineral Resources (Policy RM4)**

78. Policy RM4, is a new policy that aims to ensure that all of the existing already safeguarded soft sand, clay and gypsum resources are extracted prior to any development, as those safeguarded resources are likely to be necessary to maintain supply. In principle this approach is consistent with the NPPF and is necessary particularly as no additional sharp sand and gravel resource is proposed to be safeguarded over the Plan period as modified. However, as written Policy RM4 only applies to development proposals in MSA's and can only be applied in conjunction with Policy RM3. Furthermore, it is also unclear what "to the satisfaction of the MPA" means in demonstrating compliance.
79. Therefore, to avoid ambiguity and in the interests of effectiveness, MMs are necessary to delete Policy RM4 and instead incorporate the wording of Policy RM4 into Policy RM3. Furthermore, MM is needed to make it clear what evidence is needed to demonstrate compliance, so that a decision maker knows how to react. **MM08** does all this and is therefore necessary for effectiveness and to ensure consistency with national policy.

#### **Safeguarding Minerals Infrastructure (Policies RM5 and RM6)**

80. The Plan area has historically not been self-sufficient in land-won aggregates. The efficient operation of Wharves such as Newhaven, Shoreham and Rye and railheads Newhaven and the British Gypsum rail facility at Robertsbridge are therefore essential to preserve the ability to process and transport minerals in and out of the Plan area to meet development needs.

81. Policy RM5 would replace Policies SP9 and WMP15 of the WMP and seeks to safeguard minerals infrastructure. Policy RM5 correctly makes reference to the Agent of Change principle and identifies existing mineral infrastructure to be safeguarded on the policies map rather than listing safeguarded infrastructure in policy wording. This approach, in principle, is justified.
82. The site boundaries of minerals infrastructure are identified as MSAs on the submission policies map. However, Policy RM5 says the Authorities will periodically review and update MSAs as required. MSAs will need to be reviewed through the formal Local Plan preparation/review process to ensure they can be appropriately consulted on and examined and therefore the Authorities approach in this regard is not justified or consistent with national policy and a MM is therefore needed to delete this clause [**MM09**].
83. A SOCG (R-DTCS01.4) between East Sussex County Council and the Port Authority, agrees the safeguarding of East Quay at Newhaven does not compromise any current non minerals related uses from continuation, but recognises its potential to contribute to the imports of marine won aggregates. The SOCG accurately also shows the full extent of the individual mineral infrastructure sites boundaries at East Quay. This differs from that on the submission policies map. The submission Policies Map also does not accurately show the full extent of all the mineral infrastructure site boundaries associated with Shoreham Harbour. Consequently, the geographical extent of Policy RM5 is not justified. However, the Authorities intend to address these issues on adoption as detailed in PM4, PM5 & PM6 of MM-PM01. Subject to these changes and **MM09**, Policy RM5 would be soundly based.
84. Policy RM6 supersedes Policy SP10 of the WMP and seeks to safeguard facilities for concrete batching, coated materials manufacture and other concrete products within the Plan area. In contrast with Policy SP10 of the WMP it also relies on the policies map for the identification of relevant facilities. Furthermore, it also references the Agent of Change principle and includes more detailed wording setting out the limited circumstances upon which planning permission may be granted for other uses in the safeguarded locations as identified on the policies map. In principle, this approach is sound.
85. However, other minerals infrastructure or plant such as that associated with plasterboard and brick production is not safeguarded by either Policy RM5 or RM6. A MM is therefore needed to Policy RM6 to ensure all types of minerals plant and infrastructure not covered by Policy RM5 are safeguarded in the interests of effectiveness. Furthermore, it is common for minerals plant infrastructure to be located in larger infrastructure sites safeguarded by Policy RM5. Therefore, Policy RM6 should also be modified to make clear that the sites it safeguards are safeguarded for the lifetime of the larger host site, also in the interests of effectiveness [**MM10**].

### **Minerals Consultation Areas (Policy RM7)**

86. Policy RM7 designates MCAs as identified on the submission policies map and requires consultation with the MPA to be undertaken for non-mineral development within MCAs. Policy RM7 applies only to East Sussex outside of the SDNP, because Brighton & Hove City Council and the South Downs National Park Authority are both MPAs. Policy RM7 also does not apply to excluded development as identified in the justification text to Policy RM3 as modified by **MM07**.
87. However, Policy RM7 states MCAs will be reviewed as necessary. Such a review would significantly alter how Policy RM7 is applied and should be subject to consultation and examination through the formal Local Plan preparation/review process. Furthermore, Policy RM7, is not explicitly clear that there will be instances where consultation with the MPA will be necessary for developments outside of the MCAs. In such cases, clearly the local planning authorities will need to exercise judgement, but in the interest of effectiveness additional wording should be added to the justification text of Policy RM7 to explain it is not only where development falls within a MCA that consultation with the MPA will be required.
88. The geographical application of Policy RM7 is shown through MCA boundaries on the submission policies map. Standard 100m buffer zones have been drawn around all MSAs except for Rye Harbour and East Quay Newhaven. The 100m buffer zone is carried forward from the approach in the WMLP, it is justified and fit for purpose in the absence of bespoke site-specific information which might suggest alternative boundaries.
89. However, as explained above, because the geographical application of the MSA requires modification in relation to Newhaven and Rye harbour, so will the associated MCA boundary on the submission policies map (PM4, PM5 & PM6 of MM-PM01). In addition, Policy RM7 does not adequately explain that planning applications for development within a MCA that is not included on the list of excluded development will require consultation with the MPA. Furthermore, the Policy does not identify that Neighbourhood Planning Groups will also need to consult the relevant MPA where allocating land affecting MSA's in their Neighbourhood Plan. **MM11** addresses all of the above matters and is necessary for the Plan to be justified and effective.

### **Conclusion on Issue 4**

90. Subject to the MMs identified above the Plan's approach to minerals safeguarding is justified, effective and consistent with national policy.

## **Issue 5 – Whether the Plan makes adequate provision for the management of waste?**

### **Sustainable Locations for Waste Development (Policy RW1)**

91. The overall strategy for waste as set out in the WMLP is not altered by the Plan. Policy RW1 replaces Policies WMP7a and WMP7b of the WMP and seeks only to add clarification to the existing approach set out in the policies to be replaced. Policy RW1 does not specifically refer to small scale facilities as these are dealt with in Policy RV1.
92. Policy RW1 identifies areas of focus within which sustainable opportunities for locating waste and recovery facilities will be supported in the same way as Policies WMP7a and WMP7b of the WMP. However, Policy RW1 introduces criteria to allow exceptional circumstances to be demonstrated where it is not possible to locate waste development proposals on industrial land, previously developed land or existing waste management land.
93. Overall, the Authorities broad approach is consistent with the aims of paragraph 4 of the National Planning Policy for Waste (2014) (NPPW).
94. However, additional justification text is required to explain how the areas of focus have been identified. It should also make reference to considering impact on AONB / National Landscapes, the proximity principle, encouraging net self-sufficiency and ensuring any proposals have regard to cross boundary movements. Furthermore, the justification text does not adequately explain that opportunities should be sought for the co-location of waste management facilities. **MM03** would address these matters by adding further justification text in the interests of effectiveness and ensuring consistency with national policy.

### **Conclusion on Issue 5**

95. Subject to the MMs identified above the Plan makes adequate provision for the management of waste and is justified, effective and consistent with national policy in this regard.

## **Issue 6 – Whether the development management policy is justified effective and consistent with national policy?**

### **Environment and Environmental Enhancement (Policy RD1)**

96. The WMP sets out a suite of policies for use in determining minerals and waste development planning applications. The Authorities monitoring reports indicate

these policies are performing well and do not require altering at this time except for Policy WMP27.

97. Policy RD1 would therefore replace Policy WMP27 and has the same aim to ensure development conserves and enhances the environment. However, Policy RD1 includes the NPPF requirement for new development to secure biodiversity net gain. Furthermore, through additional and amended justification text it clearly sets out the approach to undertaking a site specific HRA which is consistent with the Wealden High Court Judgement<sup>6</sup>. Policy RD1 also differs from Policy WMP27 in that it makes reference to the Sussex Local Nature Recovery Strategy.
98. However, MM is needed to specifically explain in the justification text that a minimum of a 10% biodiversity net gain is required and not just net gain in line with the Environment Act 2021 which came into effect during the examination. We have adjusted **MM12** from that consulted upon to reflect this. Furthermore, MM is also needed to distinguish between effects on sites of national importance and effect on sites of international importance, making clear that an appropriate assessment is required and only imperative reasons of overriding public interests can outweigh any harm to sites of international importance.
99. **MM12** as amended, would address all of these issues in the interests of ensuring effectiveness, legal compliance and consistency with national policy.

### Conclusion on Issue 6

100. Subject to the MM identified above the Plan's replacement development management policy is justified effective and consistent with national policy.

### Issue 7 – Whether the Monitoring section of the Plan is effective?

101. As required by the NPPF, the Implementation and Monitoring section of the Plan sets out clear performance indicators against which the effectiveness of the policies will be monitored. It would replace the monitoring table in section 7 of the WMP. Subject to **MM13** which would add trigger points and actions for each indicator where appropriate, clarify data sources and identify delivery partners and delivery mechanisms where necessary, the Plan's monitoring framework is effective.

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<sup>6</sup> Wealden District Council v Secretary of State for Communities and Local Government, Lewes District Council and South Down National Park Authority [2017] EWHC 351(Admin)



### **Conclusion on Issue 7**

102. Subject to the MM identified above the Plan's monitoring section is effective.

## **Overall Conclusion and Recommendation**

103. The Plan has a number of deficiencies in respect of soundness for the reasons set out above, which mean that we recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explained in the issues set out above.

104. The Authorities have requested that we recommend MMs to make the Plan sound and / or legally compliant and capable of adoption. We conclude that the duty to cooperate has been met and that with the recommended MMs set out in the Appendix the Plan satisfies the requirements referred to in Section 20(5)(a) of the 2004 Act and is sound.

*S Normington and L Fleming*

Inspectors

This report is accompanied by an Appendix containing the Main Modifications.