

**HAMPSHIRE COUNTY COUNCIL****Decision Report**

<b>Decision Maker:</b>	Cabinet
<b>Date:</b>	7 December 2015
<b>Title:</b>	Adoption of Supplementary Planning Documents for Minerals and Waste Safeguarding and Oil and Gas Development
<b>Reference:</b>	6958
<b>Report From:</b>	Director of Economy, Transport and Environment

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## 1. Executive Summary

- 1.1. The purpose of this paper is to update Cabinet on the progress of preparing the supplementary planning documents (SPDs) on oil and gas development and minerals and waste safeguarding and to propose that Cabinet make a recommendation to Full Council to adopt the two SPDs.
- 1.2. The intention of both of the SPDs is to provide additional guidance on the application and implementation of the policies in the Hampshire Minerals and Waste Plan (2013). This plan sets out policies on safeguarding and oil and gas development within the overall plan aim of protecting the Hampshire environment.
- 1.3. This paper seeks to:
  - summarise the purpose of the two SPDs;
  - summarise preparation of the two SPDs;
  - highlight how the SPDs link to the adopted Hampshire Minerals and Waste Plan (2013) (hereafter referred to as 'the Plan' or HMWP);
  - request that Cabinet recommend to the Full Council that they adopt the SPDs as Minerals and Waste Planning Authority; and
  - establish the next steps of the adoption process.

## 2. Contextual information

- 2.1. The County Council, as a Minerals and Waste Planning Authority (MWPA), has a statutory duty to prepare a plan to guide minerals and waste development in Hampshire. A Plan satisfying these requirements was prepared, publically examined and duly adopted by the County Council and

Southampton City Council (SCC), Portsmouth City Council (PCC), the New Forest National Park Authority (NFNPA), and the South Downs National Park Authority (SDNPA) in October 2013. This is known as the Hampshire Minerals and Waste Plan.

- 2.2. The Plan provides policy guidance on planning for minerals and waste development in Hampshire to 2030 by protecting Hampshire's environment, maintaining Hampshire's communities, and supporting Hampshire's economy. As the HMWP has been adopted by all of the partner authorities, the HMWP is now the development plan for minerals and waste development in Hampshire. It is the responsibility of the County Council and its partners to implement and monitor the Plan following its adoption.
- 2.3. The plan-making partnership came to an end upon the adoption of the HMWP and a new partnership was established between the County Council, the SCC, PCC and the NFNPA to monitor and implement the HMWP. It is important to note that the SDNPA is not part of this partnership.
- 2.4. As part of the monitoring and implementation of the HMWP, it was clear that two areas would benefit from further guidance on the implementation of the adopted HMWP's policies. These areas relate to oil and gas development and minerals and waste safeguarding.
- 2.5. Local Planning Authorities can prepare supplementary planning documents to provide additional guidance on adopted policy. A SPD is defined in Regulation 2(1) of the Town and Country Planning (Local Planning) (England) Regulations 2012<sup>1</sup> as: *'any document of a description referred to in regulation 5 (except an adopted policies map or a statement of community involvement) which is not a local plan'*<sup>2</sup>. A SPD can also *'add further detail to the policies in the Local Plan. They can be used to provide further guidance for development on specific sites, or on particular issues.*
- 2.6. SPDs are capable of being a material consideration in planning decisions but are not part of the development plan<sup>3</sup>.
- 2.7. The form and content of SPDs is set out in Regulation 8 the Local Planning Regulations 2012<sup>4</sup>. The SPDs do not conflict with the provisions of the adopted HMWP. They provide guidance on the implementation of the HMWP policies.

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<sup>1</sup> Town and Country Planning (Local Planning) (England) Regulations 2012:  
[www.legislation.gov.uk/uksi/2012/767/pdfs/ukxi\\_20120767\\_en.pdf](http://www.legislation.gov.uk/uksi/2012/767/pdfs/ukxi_20120767_en.pdf)

<sup>2</sup> *Local plan* is defined in regulation 2(1) of the Local Planning Regulations as: "local plan" means any document of the description referred to in regulation 5(1)(a)(i), (ii) or (iv) or 5(2)(a) or (b), and for the purposes of section 17(7)(a) of the Act these documents are prescribed as development plan documents (NPPF (Glossary):  
[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6077/2116950.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)

<sup>3</sup> National Planning Policy Framework ("NPPF"), glossary (2012): [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6077/2116950.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)

<sup>4</sup> Local Planning Regulations 2012: [www.legislation.gov.uk/uksi/2012/767/pdfs/ukxi\\_20120767\\_en.pdf](http://www.legislation.gov.uk/uksi/2012/767/pdfs/ukxi_20120767_en.pdf)

- 2.8. The SPDs have also been prepared in accordance with Part 5 of the Local Planning Regulations. Regulation 5 of the Local Planning Regulations prescribes, for the purposes of section 17(7)(za) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004)<sup>5</sup> the descriptions of documents which are to be local development documents. The SPD relate to 1 (a) iii which relates to *'any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land'*.
- 2.9. In preparing the SPDs, the Hampshire Authorities had regard to the matters set out in section 19(2) of the PCPA 2004 and Regulation 10 of the Local Planning Regulations 2012.
- 2.10. The provisions for this are set out in Regulations 11 to 16 of the Town and Country Planning (Local Planning) (England) Regulations 2012<sup>6</sup>. The National Planning Policy Framework<sup>7</sup> (NPPF) also sets out some requirements for the preparation of SPDs and states that they should:
- only be used where clearly justified;
  - be used where they can help applicants make successful applications or aid infrastructure delivery.
- 2.11. In addition, the National Planning Practice Guidance<sup>8</sup> states that SPDs should build upon and provide more detailed advice or guidance on the policies in the Local Plan.
- 2.12. The intention to prepare the SPDs was set out in a revised Hampshire Minerals and Waste Development Scheme which was adopted in September 2014 following consideration by the Executive Member for Economy, Transport and Environment (decision 6036).
- 2.13. The intention of both of the SPDs is to provide additional guidance on the application and implementation of the policies in the HMWP. They do not contain any additional policies on safeguarding or oil and gas development. Existing policies are already set out in the adopted HMWP. The supplementary planning documents do not conflict with the provisions of the adopted HMWP.
- 2.14. The preparation of the SPDs has complied with the adopted Hampshire Statements of Community Involvement<sup>9</sup> (2014).
- 2.15. Following a recent consultation by the Oil and Gas Authority (an executive agency of the Department of Energy and Climate Change) on the Habitats

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<sup>5</sup> Planning and Compulsory Purchase Act 2004: [www.legislation.gov.uk/ukpga/2004/5/contents](http://www.legislation.gov.uk/ukpga/2004/5/contents)

<sup>6</sup> Regulations 11 to 16 of the Town and Country Planning (Local Planning) (England) Regulations 2012: [www.legislation.gov.uk/uksi/2012/767/pdfs/uksi\\_20120767\\_en.pdf](http://www.legislation.gov.uk/uksi/2012/767/pdfs/uksi_20120767_en.pdf)

<sup>7</sup> National Planning Policy Framework, paragraph 153 (2012): [www.gov.uk/government/publications/national-planning-policy-framework--2](http://www.gov.uk/government/publications/national-planning-policy-framework--2)

<sup>8</sup> National Planning Practice Guidance: <http://planningguidance.planningportal.gov.uk/> :

<sup>9</sup> Hampshire Statement of Community Involvement: [www3.hants.gov.uk/mineralsandwaste/sci-2.htm](http://www3.hants.gov.uk/mineralsandwaste/sci-2.htm)

Regulation Assessment (HRA) for the 14<sup>th</sup> round of oil and gas licencing<sup>10</sup>, it is expected that the Government will confirm the 14<sup>th</sup> round of oil and gas licences in late 2015 / early 2016. A number of these licence areas are located in Hampshire, including two new licence areas located to the north of Winchester, encompassing Andover, Whitchurch and surrounding areas. It is also anticipated that a planning application for conventional oil and gas development may be received by the authority in early 2016. Therefore the early consideration of the adoption of the oil and gas SPD is therefore particularly important in order that the maximum weight will be given to the SPD in the decision making process, as a material consideration.

## **Oil and gas development in Hampshire**

2.16. Since the adoption of the Plan, the issue of oil and gas development and the potential for hydraulic fracturing ('fracking') has shown itself to be an issue of interest and concern to Hampshire communities. The HMWP contains a policy specifically on oil and gas development (Policy 24). However, due to the interest in this subject, the County Council and its partners decided that the development of a SPD on oil and gas development would provide greater clarity and certainty to Hampshire's communities and interested parties on issues associated with this type of development. The intention to prepare a SPD also follows the Oil and Gas Development in Hampshire event, which took place in June 2014. The SPD sets out the local expectations for oil and gas planning applications submitted in Hampshire.

2.17. The oil and gas SPD covers the following areas:

- Oil and gas licencing in Hampshire;
- Permitted oil and gas development;
- Phases of oil and gas development;
- Planning Performance Agreements;
- Preparing a planning application for oil or gas development in Hampshire:
  - Pre-application discussions;
  - When will a proposal require an Environmental Impact Assessment application?
  - Ensuring a planning application for oil or gas development is valid;
  - How should notice on landowners be served?
  - What planning application fees will be applicable to oil or gas development?
  - What issues should be considered as part of any oil and gas planning application? - Compliance with National Planning Policy and Local Planning Policy (The Hampshire Minerals and Waste Plan (2013));

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<sup>10</sup> Consultation on the Habitats Regulations Assessments of 14th onshore oil and gas licensing round (2015): [www.gov.uk/government/consultations/habitats-regulations-assessments-of-14th-onshore-oil-and-gas-licensing-round](http://www.gov.uk/government/consultations/habitats-regulations-assessments-of-14th-onshore-oil-and-gas-licensing-round)

- What other regulatory regimes or agencies may be involved or have an interest in the planning process for oil or gas developments?
- Why is community engagement important to the planning process?
- How will decision making take place for oil or gas developments in Hampshire?
- What conditions are likely to be attached to planning permissions in Hampshire?
- Planning obligations;
- Monitoring and enforcement of oil and gas developments in Hampshire;
- Community benefits.

### **Minerals and waste safeguarding in Hampshire**

2.18. Minerals and waste safeguarding is also an issue which requires further implementation guidance now that the HMWP has been adopted. The HMWP includes clear policies on the safeguarding of mineral resources (Policy 15), minerals infrastructure (Policy 16), waste infrastructure (Policy 26), and potential wharves and rail depots (Policy 34). Further guidance is required to ensure that Hampshire's district and borough Councils consult the relevant MWPA effectively when non-minerals-or-waste developments are proposed which impact the mineral resources and/or minerals and waste infrastructure safeguarded by the Plan. Further guidance is also required to ensure that developers (for non-minerals-or-waste developments) consider safeguarding issues at the earliest stages of when preparing masterplans or planning applications.

2.19. The minerals and waste SPD covers the following areas:

- Background to minerals and waste safeguarding in Hampshire:
  - Safeguarding Mineral Resources;
  - Safeguarding Minerals and Waste Infrastructure;
  - Safeguarding potential minerals and waste wharf and rail depot infrastructure;
  - Mineral Safeguarding Area;
  - Minerals and Waste Consultation Area (including the Mineral Consultation Area).
- Safeguarding and the preparation of planning applications for non-mineral-or-waste uses:
  - Developer considerations;
  - Avoiding sterilisation of mineral resources;
  - Recycled aggregates;
  - Consideration of existing or future minerals and waste infrastructure;
  - Safeguarding and the design of development;
  - Pre-application discussions;
  - Information developers may need to provide;
  - Mineral exploratory data;
  - Redevelopment proposals.
- Minerals and waste safeguarding procedures in Hampshire:
  - Existing consultation procedures;
  - General consultation arrangements;

- Local Plan preparation;
- Development Proposals;
- Policies Maps;
- Consideration of comments received from the Minerals and Waste Planning Authority.
- Monitoring of the Supplementary Planning Document.

### **3. Associated supporting documentation**

- 3.1. The draft SPDs were accompanied by a number of supporting documents.
- 3.2. The preparation of the two SPDs has been subject to a full Integrated Sustainability Appraisal (ISA)<sup>11</sup>. The ISA comprises a joint sustainability appraisal and strategic environmental assessment and has been carried out in parallel to the development of the two SPDs, informing their development.
- 3.3. The partner authorities also have a duty to ensure that the Plan was prepared in accordance with the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations), specifically Regulation 102 which requires that where a land use plan is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and is not directly connected with or necessary to the management of the site, the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives. A Habitats Regulation Assessment (HRA) screening was undertaken<sup>12</sup>. This assessment examines the impact that the documents would have on the integrity of the sites designated under the European Union Habitats Directive. The HRA satisfies the requirements of the Habitat Regulations to prepare an assessment of the SPDs on the integrity of European Sites. In accordance with Regulation 102 of the 2010 regulations, Natural England were consulted on the HRA. Natural England concurred with the conclusions of the HRA for the SPDs. This is the same conclusion of the HRA undertaken for the HMWP, which is set out in the final HRA Record<sup>13</sup>.
- 3.4. An Equality Impact Assessment (EqIA) is a tool that helps public authorities make sure their policies, and the ways they carry out their functions, do what they are intended to do and for everybody. Carrying out an assessment involves systematically assessing the likely (or actual) effects of policies on people in respect of disability, gender, including gender identity and racial equality and, where you choose, wider equality areas. This includes looking

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<sup>11</sup> ISA of SPDs (2015): <http://documents.hants.gov.uk/mineralsandwaste/consultation-2015/IntegratedSustainabilityAppraisalReport.pdf>

<sup>12</sup> HRA of SPDs (2015): <http://documents.hants.gov.uk/mineralsandwaste/consultation-2015/HMWPSPDHabitatsRegulationsAssessmentJune2015v1.pdf>

<sup>13</sup> Hampshire Minerals and Waste Plan HRA Record (2013): <http://documents.hants.gov.uk/planning-strategic/HMWPHRARRecordFINALSept2013.pdf>

for opportunities to promote equality that may have previously been missed or could be better used, as well as negative or adverse impacts that can be removed or mitigated, where possible. An EqIA was undertaken<sup>14</sup>. The assessment concludes that the SPDs are unlikely to have a significant negative effect on any group of residents with protected characteristics in Hampshire and nearby areas, as the SPDs impacts have been considered through EQIA for the HMWP and the ISA. These SPDs only provide guidance on the implementation of existing policies. In addition, it was concluded that the SPDs are unlikely to impact significantly more on any one of the different customer groups likely to be excluded, than it would on the population as a whole.

- 3.5. The NPPF<sup>15</sup> sets out a 'duty to co-operate' on planning issues between public bodies. This engagement is documented in a Duty to Co-operate Statement<sup>16</sup> which has been prepared by the Hampshire Authorities to sit alongside the SPD. The Hampshire Authorities have committed to work collaboratively with other bodies to ensure that the strategic priorities, set out in the HMWP will continue to be properly coordinated and clearly reflected in any subsequent review of the Plan.
- 3.6. An Oil and Gas Background study<sup>17</sup> was also prepared to facilitate the development of the Oil and Gas SPD.

#### **4. Public consultation**

- 4.1. The Executive Member agreed to a consultation on two draft SPDs in May 2015 (decision 6633).
- 4.2. The draft SPDs were then subject to a 6 week public consultation which ran from 29 June – 7 August 2015<sup>18</sup>.
- 4.3. 28 responses were received on the oil and gas SPD and 30 on the minerals and waste safeguarding SPD. A summary report detailing the responses received and the response by the Hampshire Authorities was prepared<sup>19</sup>. Amendments to SPDs took place, as required, taking into account the consultation responses received.

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<sup>14</sup> Equalities Impact Assessment of the SPDs:  
<http://documents.hants.gov.uk/mineralsandwaste/consultation-2015/EqualitiesImpactAssessmentEqIASafeguarding-OilandGasSPD.pdf>

<sup>15</sup> National Planning Policy Framework, paragraph 178-181:  
[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6077/2116950.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)

<sup>16</sup> Hampshire Minerals and Waste Plan Supplementary Planning Documents Duty to Co-operate Statement (Hampshire Authorities, September 2015)

<sup>17</sup> Oil and Gas Study (2015): <http://documents.hants.gov.uk/mineralsandwaste/consultation-2015/OilandGasDevelopmentinHampshireBackgroundStudyv1June2015.pdf>

<sup>18</sup> Public consultation on the SPD: [www.hants.gov.uk/spdconsultation-2015.htm](http://www.hants.gov.uk/spdconsultation-2015.htm)

<sup>19</sup> Summary report of SPD consultation:  
<http://documents.hants.gov.uk/mineralsandwaste/consultation-2015/OilGasSPDConsultationReport.pdf>

- 4.4. Following the consultation, the draft SPDs were presented to the Economic, Transport and Environment Scrutiny Committee (30 October 2015) (reference 7013). The Select Committee noted and welcomed the development of the two Supplementary Planning Documents, and support their adoption.

## **5. Performance**

- 5.1. The HMWP was prepared in partnership with SCC, PCC, NFNPA and the SDNPA. This partnership formally ended upon the adoption of the HMWP.
- 5.2. The County Council negotiated a revised Partnership Agreement with SCC, PCC and the NFNPA following the adoption of the HMWP. This new partnership covers the implementation and monitoring work required for the HMWP. The partnership provides the financial and technical support for the SPDs identified.
- 5.3. A separate Service Level Agreement (SLA) has been drawn up between the County Council and the SDNPA to cover the monitoring duties of the SDNPA with respect to the Plan only. It should be noted that this SLA does not cover the preparation of the SPDs, meaning that the SPDs will not cover the SDNPA administrative area.

## **6. Future direction**

- 6.1. If adopted, an adoption statement will be published and the SPDs will sit alongside the adopted HMWP, providing guidance on the implementation of specific policies within the Plan. The two SPDs will not form part of the development plan but will be capable of being a material consideration in planning decisions in Hampshire.

## **7. Recommendations**

- 7.1. To recommend that the County Council adopts the Minerals and Waste Safeguarding in Hampshire Supplementary Planning Document, as outlined in appendix 1 of the report, as supplementary guidance for the adopted Hampshire Minerals and Waste Plan.
- 7.2. To recommend that the County Council adopts the Oil and Gas Development in Hampshire Supplementary Planning Document, as outlined in appendix 2 of the report, as supplementary guidance for the adopted Hampshire Minerals and Waste Plan.
- 7.3. To recommend that authority is delegated to the Director of Economy, Transport and Environment to undertake all necessary steps to secure the process of statutory adoption including the publication of formal notices on the adoption of the supplementary planning documents.

Rpt/6958/LKH

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes
Corporate Improvement plan link number (if appropriate):	

**Other Significant Links**

<b>Links to previous Member decisions:</b>		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
Adoption of Supplementary Planning Docs for Minerals and Waste Safeguarding and Oil and Gas Development (Select Committee consideration)	7013	30 October 2015
Consultation on Supplementary Planning Documents for Minerals and Waste Safeguarding and Oil and Gas Development	6633	12 May 2015
Updated Hampshire Minerals and Waste Development Scheme	6036	9 September 2014
Hampshire Minerals & Waste Plan - Implementation and Monitoring Partnership Agreement	5429	1 April 2014
Hampshire Statement of Community Involvement	5646	1 April 2014
Adoption of the Hampshire Minerals and Waste Plan	5198	19 September 2013
<b>Direct links to specific legislation or Government Directives</b>		

<u>Title</u>	<u>Date</u>
Town and Country Planning (Local Planning) (England) Regulations 2012	2012
National Planning Practice Guidance National Planning Policy Framework	Live 2012

### **Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

<u>Document</u>	<u>Location</u>
Draft Minerals and Waste Safeguarding SPD (June 2015)	Winchester
Draft Oil and Gas Development SPD (June 2015)	Winchester
Hampshire Minerals and Waste Plan (2013)	Winchester
Equalities Impact Assessment	Winchester
Integrated Sustainability Appraisal Report	Winchester
Habitat Regulation Assessment	Winchester
Duty to Co-operate Statement	Winchester

## **IMPACT ASSESSMENTS:**

### **1. Equality Duty**

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**Due regard in this context involves having due regard in particular to:**

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

### **1.2. Equalities Impact Assessment:**

The SPDs do not contain any additional policies. The SPDs provide guidance on the implementation of the policies of the adopted Hampshire Minerals & Waste Plan. As a result, it is considered that the documents have a low if not no impact on all groups. An Equalities Impact Assessment will be prepared as part of the preparation of the SPDs as this will be adopted by the County Council if approved.

### **2. Impact on Crime and Disorder:**

2.1. The decision will have no impact upon crime and disorder.

### **3. Climate Change:**

3.1. How does what is being proposed impact on our carbon footprint / energy consumption?

The SPD on minerals and waste safeguarding does not directly impact carbon emissions.

The SPD on oil and gas development does not directly impact carbon emissions although it is recognised that oil and gas development can result in emissions to air.

- 3.2. How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

The SPD on oil and gas development does not directly relate to adaptation to climate change. The SPD will provide guidance on the implementation on policies in the HMWP related to climate change mitigation and adaptation.