

# **1 Response Paper – Appendix Five – Consultation Procedure for Mineral Safeguarding Areas (now Appendix 2 – The Implementation of Mineral Resources and Infrastructure Safeguarding Policy)**

## **Purpose of Appendix Five**

- 1.1 The purpose of Appendix Five is to provide additional detail around the mineral resource and infrastructure safeguarding procedures set out through Policy S8: Safeguarding Mineral Resources and Mineral Reserves and Policy S9: Safeguarding Mineral Transshipment Sites and Secondary Processing Facilities. It is noted that due to the proposed deletion of Appendix Two, Three and Four, Appendix Five in the currently adopted MLP is Appendix Two in the Replacement Essex Minerals Local Plan 2025 - 2040.

## **Summary of Position Prior to March 2021 Regulation 18 (Reg 18) Consultation**

- The experience of operating Policy S8 since the MLP was adopted, coupled with the proposed revisions to Policy S8 and Policy S9, dictates that there would be merit in significantly expanding Appendix 5 to include more detail with regards to how the MPA envisage the safeguarding process to operate, as well as clarify the intentions behind safeguarding and how information feeds into the determination process.
- To recognise the expanded remit, it is proposed to amend the title of the appendix to 'The Implementation of Mineral Resource and Infrastructure Safeguarding Policy' such that it also covers Policy S9 and the new Mineral Infrastructure Consultation Area designation.
- Through Duty to Cooperate engagement, it was suggested by the MPA that it would maintain a schedule of Local Plan allocations which sets out progress, to date, with regards to the application of mineral resource and infrastructure safeguarding policies as they related to site allocations in Local Plans. Therefore, it is proposed to amend Appendix 5 to state that said schedule will be maintained.
- Two changes are proposed for the table which sets out whether development is 'included' or 'excluded' for the purposes of safeguarding policy. The first is a proposed amendment to now 'include' applications for development on land which is already allocated in adopted local development plan documents, with the caveat that allocations appropriately addressed through previous engagement during formation of the relevant Development Plan document are to remain excluded. This will be captured by the above schedule.
- The second proposed amendment is to remove the caveat of applications for buildings, structures and uses only being able to be considered as being temporary, and therefore excluded from safeguarding policy, if they are proposed to remain in-situ for five years or less. This is considered to be an

unnecessarily restrictive interpretation of what constitutes temporary development. This is re-addressed through the section on 'Further changes to requirements for Minerals Resource Assessments and Mineral Infrastructure Impact Assessments' below.

- Generic schedules of information that would be expected to form a competent Minerals Resource Assessment and Minerals Infrastructure Impact Assessment are to be included. The proposed schedules have been operated for years through the safeguarding process and the MWPA now considers that there is merit in including these within the Plan.
- There would be merit in including sections setting out how the MWPA would expect information arising out of Mineral Resource Assessments to be used in formulating a decision with regards to the practicability of prior extraction, which supplements the supporting text already included under Policy S8. There then follows additional practical advice for determining planning applications within Mineral Safeguarding Areas, which also draws on Minerals Safeguarding Practice Guidance, prepared by the Minerals Products Association and the Planning Officers Society. This is supplemented by further information based on an interpretation of Schedule 1, Section 1 (Local Planning Authorities: Distribution of Functions) of the Town and Country Planning Act 1990 and relevant case law, and a flowchart.

### **Impact of Revisions to NPPF 2021**

- 1.2 The role of Appendix Five is to provide further detail with regards to the operation of mineral resource and infrastructure safeguarding policy. The provisions regarding these safeguarding approaches were not impacted by the revisions to the NPPF in 2021.

### **Summary of Issues Raised through March 2021 Reg 18 Consultation**

- 1.3 A number of representations indicated support for the proposed amendments to Appendix Five without providing any additional details.
- 1.4 Representations received through the consultation raised the following issues in relation to Appendix Five that require additional consideration and/or clarification through this Topic Paper:
  - Assessing the practicality and environmental feasibility of prior extraction
  - Placing deposits to be extracted into their geological context.
  - Further changes to requirements for Minerals Resource Assessments and Mineral Infrastructure Impact Assessments – minor household extensions within 250m of a safeguarded site and the definition of temporary development.
- 1.5 In addition, since the Appendix Five amendments were originally proposed through the Regulation 18 Consultation 2021, the MWPA has further considered the approach set out in Appendix Five and concluded that there is merit in re-

amending the approach in two instances. As such, there is an additional section in this report entitled 'Further changes to the requirements for Mineral Resource Assessments and Mineral Infrastructure Impact Assessments

### **Addressing Issues Arising Out of March 2021 Reg 18 Consultation**

- 1.6 This section acts to address the issues raised through the March 2021 Regulation 18 Consultation in relation to this policy, as set out above, and subsequently details any changes in approach made through their consideration. These changes of approach will be incorporated within The Draft Essex Minerals Local Plan 2025-2040 Regulation 18 document which will again be subjected to a Regulation 18 public consultation.
- 1.7 There now follows a discussion of each of the main issues raised during the March – April 2021 Reg18 Consultation in relation to this Plan section:

#### Assessing the practicality and environmental feasibility of prior extraction

- 1.8 A representation made a number of comments stating that the approach to safeguarding was one-sided and disproportionate. It was considered that broadly the draft plan is too restrictive and unreasonable in its requirements for prior extraction to be undertaken.
- 1.9 The MWPA however considers that the mineral safeguarding approach set out in the adopted MLP is compliant with the NPPF by virtue of its adoption, and any proposed revisions to the MLP set out in Appendix 5 seeks to prescribe in more detail how the safeguarding approach already adopted can be better facilitated.
- 1.10 One reason given for why the approach was considered disproportionate was that the scale of mineral resource that would ever likely to be lost over the longer term to non-mineral development was considered to be low compared to the overall resource size, particularly for sand and gravel. This contention is noted but matters of abundance, local or otherwise, are not set out in the NPPF or PPG as reasons to disapply safeguarding policy and therefore they are not considered to be material to the application of safeguarding policy.
- 1.11 It was further raised that mineral safeguarding has the potential to restrict housing growth, obstructing development in what would otherwise be sustainable locations. It was stated that the draft plan should be amended to clearly recognise that in these circumstances, where sustainable development can be achieved, in most cases mineral safeguarding should not be used to prevent development. It is in this context that the implementation of the safeguarding policy by the Mineral Planning Authority (MPA) needs to be proportionate.
- 1.12 The MWPA notes that Mineral safeguarding is not used to 'prevent development'. In accordance with NPPF Paragraph 210d, the MLP approach is to encourage the prior extraction of minerals, where practical and environmentally feasible, if it is necessary for non-mineral development to take

place.’ Proposed revisions to the safeguarding approach seek to set out more clearly how the demonstration of whether prior extraction is practical and environmentally feasible can be assessed. Further, NPPF Paragraph 210c requires that ‘known locations of specific minerals resources of local and national importance are not sterilised by non-mineral development where this should be avoided (whilst not creating a presumption that the resources defined will be worked). Again, revisions to the MLP approach are to ensure that minerals are not sterilised where this can be avoided. Nowhere in the policy or its supporting text does it state that prior extraction is required as a matter of course. It is therefore suggested that the safeguarding approach is NPPF compliant and proportionate. The MWPA further notes that Paragraph 209 of the NPPF states that ‘It is essential that there is a sufficient supply of minerals’ and that ‘best use needs to be made of them to secure their long-term conservation.’ It is further questioned as to whether development can be considered to be sustainable if it acts to sterilise important finite resources which could have been prior-extracted.

- 1.13 Through the consultation, it was also considered that the evidence base used for a number of the safeguarding assumptions is significantly out of date (in the case of the threshold for Minerals Resources Assessment (MRA) to be undertaken, and BGS and industry data) or are based on broad unsupported and unevidenced assumptions (e.g., 100m standoff from existing minerals operations).
- 1.14 With regards to BGS data being out of date, a project was commissioned with BGS in 2021 to re-designate MSAs for a future revised Policy Map. The new spatial extent of MSAs is based on the latest Digital Mineral Resource Data held by the BGS. The MSAs indicate where there is resource potential based on existing geology, and their extent is also in part based on historic Mineral Assessment Reports carried out by the Industrial Minerals Assessment Unit using the criteria set out in bullet points a-d under MLP Paragraph 3.119. Whilst it is recognised that these criteria have been modified in some other counties following BGS-led industry interviews, the role of MSAs is to safeguard land for future mineral potential, and the criteria used were confirmed by the Mineral Products Association in 2019 as still being widely used by aggregate industry geologists for land search and Mineral Planning Authorities in establishing their mineral supply and safeguarding policies, and therefore the stated criteria for determining whether a deposit is potentially viable is still therefore relevant and consequently a fair indicator of where a more detailed site-level investigation should take place ahead of non-mineral development potentially sterilising mineral.
- 1.15 With regard to the suggestion that the approach contains ‘broad unsupported and unevidenced assumptions’ through references to 100m and 250m stand-offs, it is noted by the MWPA that the adopted MLP states at Paragraph 5.20 that ‘A minimum of a 100m ‘buffer zone’ from the extraction face to the wall of a residential property would normally be required to minimise the impact of working on local amenity.’ It is emphasised that the phrase is caveated with the

word 'normally'. The 250m distance for MCAs is also already an adopted approach, common in other authorities and set out in Mineral Products Association/ Planning Officer Society Guidance.

- 1.16 In relation to the 100m buffer, it is important to note that this is not to say that extraction is not permissible less than 100m from the façade of a dwelling (ie the mineral is sterilised) if impacts are demonstrably mitigatable. It is also noted that mineral could potentially be sterilised when sensitive development is located more than 100m from the boundary of an MSA. However, there is a requirement for the MPA to adopt a pragmatic approach, allowing for applications to be assessed on a case-by-case basis, but also allowing for transparent parameters upon which desk-based assessment can take place. Parameter setting in this way is considered to be a positive in terms of imbuing the process with proportionality, echoes the approaches adopted elsewhere, and is already part of the Development Plan.
- 1.17 It was further stated that the approach to prior extraction is unrealistic, unjustified and one-sided, and that there is no recognition of the cost associated with undertaking it.
- 1.18 This is not agreed with. In accordance with NPPF Paragraph 210c, there is no presumption that prior extraction will take place. The practicality and feasibility of prior extraction is to be assessed through a Minerals Resource Assessment. It is also incorrect to state that there is no recognition of the cost associated with undertaking prior extraction. In Table 9, which sets out a schedule of requirements for MRA, it is stated that one consideration to be made in the MRA is the 'Effect on viability of non-minerals development including through delays and changes to landform and character' whilst the conclusion should consider 'Whether prior extraction is practical at the site in the context of the non-mineral development, taking into account the estimated value of the mineral, restoration and the viability of the proposed development'.
- 1.19 Additional issues were raised with regards to the approach to MRA. A general point was raised around the stage at which further intrusive site drilling is required to accompany an MRA. It was stated that geotechnical drilling is a significant cost, and that it makes sense that this is only undertaken when a desk-based assessment has been unable to reach an agreed conclusion with the Mineral Planning Authority (MPA). It was also stated that it is likely that several sites that need to have a MRA undertaken can be suitably assessed using available desk-based data or from undertaking a site visit. In these cases, the findings of the desk-based assessment can be shared with the MPA before a decision is made to required further intrusive site investigation and incurring the costs associated with doing so.
- 1.20 The MWPA agrees that there may be circumstances under which intrusive ground investigation is not required. In supporting text to Table 9, it is stated that 'The scope of the MRA, including a schedule of proposed borehole locations, should be agreed with the MPA before commencement'. It is further stated that 'It is acceptable to utilise existing borehole information where this

exists but this may be required to be supplemented by additional borehole logs to provide the required level of site-specific detail.’ It is also stated that ‘The scope and level of detail of a Minerals Resource Assessment will be influenced by the specific characteristics of the site’s location and its geology, as well as the nature of the development being applied for.’. For clarity, an amendment is proposed to make clear that intrusive borehole information may not be required if it can be demonstrated that prior extraction is not practical and/ or environmentally feasible without recourse to such information. However, given that the volume, quality, and economic value of the mineral is likely to be fundamental to most conclusions, any proposal to not include borehole investigation as part of the MRA should be agreed with the MWPA in advance.

- 1.21 A specific issue was raised with regards to MLP Table 8 which sets out the types of development that are considered to be included or excluded from safeguarding provisions. This was to object to an amendment proposed by the MWPA to include applications for development on land which is already allocated in adopted local development plan documents. It was stated that for all local plans produced in Essex, ECC will be a major consultee. As part of that consultation process ECC will have reviewed all plans to ensure they comply with the relevant policies, included assessing it from a mineral safeguarding perspective.
- 1.22 It was further considered that for an allocation to be adopted, the plans that it is allocated in must be found to be sound by an Inspector. As part of an Inspector’s consideration of a Local Plan, ECC will have been invited to comment on all matters. ECC will have had ample opportunity to raise mineral safeguarding issues for all of the relevant local plans being brought forward in the county. As such, the clause included in the first row of table 8 is therefore unnecessary and should be removed. It should also be noted that viability matters for allocations are now considered at the local plan stage. In addition, the timing of the delivery of new developments, particularly in relation to housing and employment facilities is a crucial benchmark against which local authorities are scrutinised.
- 1.23 The MWPA notes the points raised but considers that its approach is appropriate. It is agreed that ECC is a consultee for all local plans produced in Essex and therefore will have reviewed all plans to ensure they comply with the relevant policies, included assessing it from a mineral safeguarding perspective. As part of this process, ECC does raise mineral safeguarding issues for all of the relevant local plans being brought forward in the county, and it is considered that these are raised in the most pragmatic manner. The approach is to ensure that relevant district allocation policies include the need for MRA to be carried out ahead of non-mineral development being brought forward, which essentially delays mineral safeguarding issues until such a time as developers of sites which have the potential to be allocated are provided with that certainty of allocation. As such, by way of the approach, allocated sites are ‘included’ with respect to the application of safeguarding policy as the relevant district policy states that this is so. To say they are ‘excluded’ would be to create an

unconformity between policies. It is also noted that making it clear that they are 'included' avoids issues that have previously arisen where sites were not put before the MWPA and this wasn't captured until after adoption.

- 1.24 It is considered that the only other approach would be for ECC to formally object to any allocations on land designated as an MSA until such a time as a suitably informed MRA is produced to either demonstrate that prior extraction is not practical or environmentally feasible, or to commit to a programme of prior extraction prior to non-mineral development taking place. This would potentially mean that an MRA, perhaps also needing to be informed by intrusive ground investigation, would need to be produced as part of site submission details through a housing-related Call for Sites. This would mean that the cost of such a report, as highlighted by the respondent, would need to be paid without the security of the site being allocated in a local plan.
- 1.25 Lastly on this topic, it was considered that it is unreasonable for the MWPA to introduce further issues which will lead to significant further costs and delays (if prior extraction was undertaken) for sites after they have been adopted.
- 1.26 On this point, it is noted that the approach to mineral safeguarding, including the need for MRA and prior extraction, has been a part of the Development Plan in Essex since 2014 and the NPPF since 2012. It is considered that the proposed amendments largely serve to offer further clarity with regards to the operation of adopted mineral safeguarding policy. As such, it is not correct to say that ECC are introducing 'further issues'. As mineral safeguarding is already part of the Development Plan, it is, by definition, compliant with the NPPF. All planning authorities must take decisions in accordance with the Development Plan unless material considerations dictate otherwise. At the site allocation stage during local plan formation, ECC requests that the local plan notes the need for mineral safeguarding assessment to be carried out as part of the delivery of those sites which meet the criteria. As such, the proposed amendments are bringing the MLP approach into conformity with that request. It is assumed that site promoters will be aware of the need to carry out MRA, and the potential implications of prior extraction, when bringing their sites forward as the requirement is part of the Development Plan and will, presumably, form part of any site assessment by the local planning authority. There could be many years between the allocation of a site and its eventual delivery to appropriately consider mineral safeguarding issues, and it is expected that they will be considered as part of any pre-application discussions, either with the MWPA directly or district partners.
- 1.27 It is reiterated that mineral safeguarding policy is not about stopping development, it is to ensure compliance with the NPPF requirement that mineral is not sterilised by non-mineral development where this should be avoided (NPPF Paragraph 210c) and that prior extraction of mineral is encouraged where practical and environmentally feasible, if it is necessary for non-mineral development to take place (NPPF Paragraph 210d). This is to be justified by the MRA, which may ascertain that prior extraction is practical in full, or in part, across all or part of the non-mineral site, including to facilitate on-site benefits

such as amenity, biodiversity or SuDs provision. The conclusions of an MRA should inform Masterplanning stages of bringing a site forward rather than being considered at the last minute.

- 1.28 Comments were also received in relation to Table 9 which sets out a schedule of requirements for a MRA. It was stated that in the section that deals with the nature of the existing mineral resource, some clarity should be provide that an intrusive site investigation that is purely required for the MRA should only be undertaken if a desk-based assessment cannot reach an agreed conclusion with MPA.
- 1.29 It was further requested that in addition to the constraints listed as impacting on the practicality of mineral extraction (distinct from those that would arise from the primary development), others should be included as follows:
- Impact upon rail infrastructure, particularly from a geotechnical stability perspective;
  - Tree preservation order and mature hedgerows – these can generally be built around and accommodated within the built development;
  - Impact upon public rights of way, invariably these will need to be altered to accommodate a mineral scheme, however a built development can retain these routes in situ.
- 1.30 As per its previous comments, the MWPA agrees that an intrusive ground investigation may not always be necessary, and an amendment is proposed to make this clearer.
- 1.31 With regards to the other points raised, the schedule of requirements set out in Table 9 is not intended to scope every potential constraint, and an amendment is proposed to clarify this. However, there is merit in updating the schedule as suggested. As such, it is proposed to amend 'Highways infrastructure' to include 'Highways and rail infrastructure'. It is further proposed to enter a new criterion to cover 'Tree Preservation Orders and Mature Hedgerows where they are proposed to be retained'.
- 1.32 It is not however considered to be appropriate to include Public Rights of Way as these are often re-routed as part of mineral development. However, their re-routing could be a contributing factor to making prior extraction impractical, particularly on smaller sites. This would be for the MRA to assess.

#### Placing deposits to be extracted into their geological context

- 1.33 Through the Regulation 18 Consultation 2021 it was requested whether, in relation to MRAs, boreholes and other appraisals should be in the context of the geological setting of the deposits insofar as they are currently understood. It was also requested that where the schedule of requirements for a MRA refers to the use of technical reports, whether this could specifically refer to geological reports. It was further requested that 'geodiversity/ geological conservation' be added to the list of constraints impacting on the practicality of mineral extraction.



- 1.34 The MWPA notes that it would only be appropriate to request the inclusion of information in the MRA that could be relevant to reaching a planning decision. It is accepted that 'geological reports' could be one such 'technical report' that could provide appropriate context and therefore this amendment will be made. A separate constraint of 'geological designations' will also be added to the schedule of requirements for a MRA. It is also proposed to add 'site history' to the title of the MRA section which currently seeks to address the site location, relevant boundaries, and timescales for the proposed development.

#### General comment on the contents of Appendix 5

- 1.35 A representation received through the Regulation 18 Consultation 2021 stated that Appendix Five is a conclusive summary of each aspect of how to decide on where the raw material is located and how each aspect of the policy is considered. Hope was expressed that this very careful consideration is being given to each site consultation, namely the extension of the Coggeshall quarry.
- 1.36 Whilst this is acknowledged, the MWPA notes that the procedures set out under Appendix Five are aimed at avoiding the unnecessary sterilisation of mineral resources that do not have planning permission to extract and avoiding existing mineral infrastructure from being compromised by inappropriate proximal development established after their planning permission was originally granted. The principles set out in Appendix Five would not explicitly apply to reserves already consented for extraction as part of the granting of planning permission, such as at a quarry, though they would determine some aspects of consultation as part of a planning application.

#### Further changes to requirements for Minerals Resource Assessments and Mineral Infrastructure Impact Assessments – minor household extensions within 250m of a safeguarded site and the definition of temporary development

- 1.37 Since the Regulation 18 Consultation 2021 closed, the MWPA are minded to make a further two amendments to those amendments already consulted on. The first of these relates to Table 8 (Table 9), which sets out the types of development to which mineral resource and mineral infrastructure safeguarding provisions apply. With respect to householder extensions, proposed amendments allow for a distinction to be made between minor household extensions that either do or do not come within 250m of a safeguarded site, as well as the extension of dwellings which are already within 250m of a safeguarding site. An amendment is proposed to set out that those householder extensions that come within 250m of safeguarded site, or otherwise brings development closer to a safeguarded site where development is already present within 250m should require a Minerals Infrastructure Impact Assessment (MIIA).
- 1.38 The second proposed amendment also relates to Table 8 (Table 9) of the adopted MLP. Table 8 (Table 9) currently sets out that temporary development of less than five years is excluded from safeguarding provisions. Through the

Regulation 18 Consultation 2021, it was proposed to remove the definition of temporary development as being development that was expected to be in-situ for less than five years. In the Rationale Report informing the consultation, it was considered that the 'five years' stipulation was an unnecessarily restrictive interpretation of what constitutes temporary development. Whilst this remains the case, further amendments are proposed such that it is clear that temporary development of any timescale will be excluded from safeguarding provisions if it can be demonstrated that mineral will not be permanently sterilised by the fact that land is capable of, and it is intended to, be restored to its original condition once the temporary use has expired, and that this is made clear in a planning application.

## Conclusion

- 1.39 Where support was received for the proposed amendments to the monitoring approach, those responses did not contain any further detail.
- 1.40 Representations received in relation to this Plan section have led to proposed amendments to the MRA schedule, as set out in Table 1 below. These relate to seeking to raise the profile of geodiversity and place potential mineral resources into their geological context, as well as setting out additional constraints to prior extraction, including rail infrastructure and where there are Tree Preservation Orders and mature hedgerows which are proposed to be retained following non-mineral development.
- 1.41 In relation to a representation stating that the approach to mineral safeguarding is too restrictive and unreasonable in its requirements for prior extraction to be undertaken, the MWPA disagrees and considers that its approach is largely already part of the Development Plan and therefore is sound. An amendment is nonetheless proposed to make clear that bespoke borehole information may not be required if it can be demonstrated that prior extraction is not practical and/ or environmentally feasible without recourse to such information. However, such an approach to MRA must be agreed with the MWPA ahead of carrying out the assessment as the volume, quality and economic value of mineral present at a site is likely to be fundamental to the consideration of whether it is practical to prior extract.
- 1.42 Two further amendments have since been considered appropriate by the MWPA following the consultation. The first of these seeks to amend the approach taken to temporary development for the purposes of applying safeguarding policy. Rather than seek to apply a timeframe, the revised approach requires evidence supporting the planning application for temporary development to demonstrate that the land can be returned to its former use upon expiry of the temporary permission such that the mineral is not being sterilised as a result of the development. The other proposed amendment is to delineate between householder extensions that are, and are not, within 250m of a safeguarded facility. It is proposed that householder extensions that result in non-mineral development coming within 250m of the boundary of mineral

infrastructure are included within safeguarding policy for the purposes of requiring a MIIA, as are extensions to dwellings already within 250m of a safeguarded site boundary. Again, proposed amendments are set out in Table 1 below

**Table 1: Schedule of Proposed Additional Amendments to Policy IMR1 – Monitoring and Review following Regulation 18 Consultation 2021 on MLP Review**

Old Ref	New Ref	Proposed Amendment
Table 9, 4th Row, Column 1, second bullet		Minor extensions to existing dwellings or properties where they lie within the immediate curtilage and would not bring the <i>built façade of the new</i> building within 250m of the boundary of an existing or approved minerals development;
N/A	Table X: Types of proposed development – New Row – ‘Column 1’	<u>Minor extensions to existing dwellings which are already within 250m of the boundary of an existing or approved minerals development</u>
N/A	Table X: Types of proposed development – New Row – ‘Column 2’	<u>Excluded</u>
N/A	Table X: Types of proposed development – New Row – ‘Column 3’	<u>Included</u>
Table 9, 7th Row, Column 1		Applications for temporary buildings, structures or uses, <del>(for up to five years)</del> <u>where it has been demonstrated through the planning application that the land is capable of, and is intended to be, returned to its former use.</u>
N/A	First paragraph of ‘The Scope and Level of Detail in a Mineral Resource	Bespoke borehole information may also not be required if it can be demonstrated that prior extraction is not practical and/ or environmentally feasible without recourse to such information. However, such an approach to MRA must be agreed with the MWPA ahead

	Assessment (Policy S8)	of carrying out the assessment as the volume, quality and economic value of mineral present at a site is likely to be fundamental to the consideration of whether it is practical to prior extract.
N/A	Table X: Row 1, Column 1	Site location, relevant boundaries, <u>site history and timescale</u> for development
N/A	Table X: Row 1, Column2	Whether there is any previous relevant site history – this could include previous consideration of site or adjacent land in preparation of Minerals Local Plan, any previous mineral assessments and market appraisals, boreholes, site investigations, technical reports ( <u>including geological reports</u> ) and applications to the Minerals Planning Authority for extraction.
N/A	Table X: Row 3, Column2	Ecology designations, Landscape character, Heritage designations, <u>geodiversity/ geological conservation.</u> Proximity to existing dwellings. Highways <i>and rail</i> infrastructure. <i>Tree Preservation Orders and Mature Hedgerows (where they are proposed to be retained)</i>

**Table 2: April 2021 Regulation 18 Consultation Responses to Appendix 5 - Consultation Procedure for Mineral Safeguarding Areas**

<b>ORGANISATION</b>	<b>ON BEHALF OF</b>	<b>APPENDIX FIVE</b>	<b>APPENDIX FIVE</b>	<b>ECC RESPONSE</b>
Name of Organisation	Are you responding on behalf of another individual or organisation? - If Yes, Who?	1.Do you agree or disagree with the rationale behind the amendments proposed in this section of the emerging Minerals Local Plan? (see Rationale Report)	Please provide any comments below:	
Runwell Parish Council (631132323)	Runwell Parish Council	Agree	N/a	N/A
W H Collier Limited (769297167/ 942768790)		Agree		N/A
Blackwater Aggregates (623162177)		Agree		N/A
CEMEX (982058282)		Agree		N/A
Gent Fairhead Aggregates		Agree		N/A

(871678397)				
Resident (850344129)		Agree		N/A
GeoEssex (538324742)		Agree (but wish to clarify)	see below (see respondents comment under Appendix Five Q2)	Noted
Coggeshall Parish Council (598729813)	Coggeshall parish council	No comment		N/A
David L Walker Ltd (559449615)	Brice Aggregates	No comment		N/A
Kelvedon & Feering Heritage Society (677892382)		No comment		N/A
Strutt & Parker (891506607)	G&B Finch	No comment		N/A
Suffolk County Council (549043477)		No comment	No comment.	Noted
Barton Willmore (1040328186)	L&Q, Cirrus Land and G120 Land	Disagree (please clarify)	This consultation response has been prepared on behalf of L&Q, Cirrus Land and G120 Land. All of these developers are promoting non-mineral development sites across Essex which are either wholly or in part affected by a series of measures outlined within the Essex County Council Minerals Local Plan Draft Proposed Amendments (referred to from here as the “draft plan”).	

		<p>Given the nature of our client's land interest, the following comments relate to how the issues of safeguarding mineral resources and avoiding their sterilisation is addressed within the draft plan.</p> <p>In relation to specific policies, our comments relate to the drafting of the following specific policies and appendices:</p> <ul style="list-style-type: none"><li>• Safeguarding Mineral Resources and Avoiding Their Sterilisation text (Paras 3.113 to 3.148);</li><li>• Policy S8 – Safeguarding Mineral Resources;</li><li>• Appendix Two - Implementation of Mineral Resource and Infrastructure Safeguarding Policy; and</li><li>• Proposals Map.</li></ul> <p>Broadly the draft plan is too restrictive, and unreasonable in its requirements for prior extraction to be undertaken. The scale of mineral resource that would ever likely to be lost over the longer term to non-mineral development is low compared to</p>	<p>The mineral safeguarding approach set out in the adopted MLP is considered to be compliant with the NPPF by virtue of its adoption, and any revisions to the MLP as set out in this Appendix seek to prescribe in more detail how the</p>
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			<p>the overall resource size (particularly for sand and gravel).</p> <p>Mineral safeguarding has the potential to restrict housing growth, obstructing development in what would otherwise be sustainable locations. The draft plan should be amended to clearly recognise that in these circumstances, where sustainable development can be achieved, in most cases mineral safeguarding should not be used to prevent development. It is in this context that the implementation of the safeguarding policy by the Mineral Planning Authority (MPA) needs to be proportionate.</p>	<p>safeguarding approach already adopted can be better facilitated.</p> <p>It is noted that matters of abundance, local or otherwise, are not set out in the NPPF or PPG and therefore they are not considered to be material to the application of safeguarding policy.</p> <p>Paragraph 209 of the NPPF states that 'It is essential that there is a sufficient supply of minerals' and that 'best use needs to be made of them to secure their long-term conservation.' Mineral safeguarding is not used to 'prevent development'. In accordance with NPPF Paragraph 210d, the MLP approach is to encourage the prior extraction of minerals, where practical and environmentally feasible, if it is necessary for non-mineral development to take place.' Proposed revisions to the safeguarding approach seek to set out more clearly how the demonstration of whether</p>
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			<p>The evidence base user for a number of its assumptions is significantly out of date (in the</p>	<p>prior extraction is practical and environmentally feasible can be assessed. Further, NPPF Paragraph 210c requires that 'known locations of specific minerals resources of local and national importance are not sterilised by non-mineral development where this should be avoided (whilst not creating a presumption that the resources defined will be worked). Again, revisions to the MLP approach are to ensure that minerals are not sterilised where this can be avoided. Nowhere in the policy or its supporting text does it state that prior extraction is required as a matter of course. It is therefore suggested that the safeguarding approach is NPPF compliant and proportionate. It is also questioned as to whether development could be considered to be sustainable if it acts to sterilise finite resources which could have been prior extracted.</p> <p>With regards to BGS data being out of date, a project was commissioned with BGS in 2021</p>
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			<p>case of the threshold for Minerals Resources Assessment (MRA) to be undertaken and the BGS and industry data) or are based on broad unsupported and unevidenced assumptions (e.g., 100m standoff from existing minerals operations.</p>	<p>to re-designate MSAs for a future revised Policy Map. The new spatial extent of MSAs is based on the latest Digital Mineral Resource Data held by the BGS. The MSAs indicate where there is resource potential based on existing geology, and their extent is also in part based on historic Mineral Assessment Reports carried out by the Industrial Minerals Assessment Unit using the criteria set out in bullet points a-d under MLP Paragraph 3.119. Whilst it is recognised that these criteria have been modified in some other counties following BGS-led industry interviews, the role of MSAs is to safeguard land for future mineral potential, and the criteria used were confirmed by the Mineral Products Association in 2019 as still being widely used by aggregate industry geologists for land search and Mineral Planning Authorities in establishing their mineral supply and safeguarding policies, and the stated criteria for determining whether a deposit is potentially viable is still therefore</p>
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				<p>relevant and consequently a fair indicator of where a more detailed site-level investigation should take place ahead of non-mineral development potentially sterilising mineral.</p> <p>With regard to the suggestion that the approach contains 'broad unsupported and unevidenced assumptions', it is noted that the adopted MLP states at Paragraph 5.20 that 'A minimum of a 100m 'buffer zone' from the extraction face to the wall of a residential property would normally be required to minimise the impact of working on local amenity.' It is proposed to retain this statement, and reference is made to the fact that the phrase is caveated with the word 'normally'. The 250m distance for MCAs is also an already adopted approach.</p> <p>In relation to the 100m buffer, it is important to note that this is not to say that extraction is not permissible less than 100m from the façade of a dwelling if impacts are demonstrably mitigatable. It is also noted that</p>
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			<p>The approach to prior extraction is unrealistic, unjustified and one sided, there is no recognition of the cost associated with undertaking it.</p> <p>In summary, the following letter outlines a series of matters that we object to in the draft plan. On the basis of the points raised, the</p>	<p>mineral could potentially be sterilised when sensitive development is located more than 100m from the boundary of an MSA. However, there is a requirement for the MPA to adopt a pragmatic approach, allowing for applications to be assessed on a case-by-case basis, but also allowing for transparent parameters upon which desk-based assessment can take place. Parameter setting in this way is considered to be a positive in terms of imbuing the process with proportionality, echoes the approaches adopted elsewhere, and is already part of the development plan.</p> <p>It is also not agreed that the approach to prior extraction is unrealistic, unjustified and one sided. In accordance with NPPF Paragraph 210c, there is no presumption that prior extraction will take place. The practicality and feasibility of prior extraction is to be assessed through a Minerals Resource Assessment.</p>
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			<p>draft plan as it is currently drafted, is considered unsound and unjustified.</p> <p>Appendix Two - Implementation of Mineral Resource and Infrastructure Safeguarding Policy:</p> <p>The comments in this section primarily relate to Tables 8 and 9 of appendix two of the draft plan.</p> <p>Outside of the comments provided in relation to the tables, we would like to make a general point about the stage at which further intrusive site drilling is required to accompany an MRA. Geotechnical drilling is a significant cost, it makes sense that this is only undertaken when a desk based assessment has been unable to reach an agreed</p>	<p>It is also incorrect to state that there is no recognition of the cost associated with undertaking prior extraction. In Table 9, which sets out a schedule of requirements for MRA, it is stated that one consideration to be made in the MRA is the 'Effect on viability of non-minerals development including through delays and changes to landform and character' whilst the conclusion should consider 'Whether prior extraction is practical at the site in the context of the non-mineral development, taking into account the estimated value of the mineral, restoration and the viability of the proposed development'.</p> <p>It is agreed that there may be circumstances under which intrusive ground investigation is not required. In supporting text to Table 9, it is stated that 'The scope of the MRA, including a schedule of proposed borehole locations, should be agreed with the MPA before commencement'. It is further stated that 'It is acceptable to</p>
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			<p>conclusion with the Mineral Planning Authority (MPA).</p> <p>It is likely that several sites that need to have a MRA undertaken can be suitably assessed using available desk-based data or from undertaking a site visit. In these cases, the findings of the desk-based assessment can be shared with the MPA before a decision is made to required further intrusive site investigation and incurring the costs associated with doing so.</p> <p>TABLE 8: The table as it is currently drafted still requires planning applications to complete an MRA and potentially undertake prior extraction even if the site has been allocated in a local plan. This is caveated that this must be undertaken unless the matter of mineral safeguarding has been adequately addressed in the relevant local plan document.</p> <p>For all local plans produced in Essex, ECC will be a major consultee. As part of that consultation process ECC will</p>	<p>utilise existing borehole information where this exists but this may be required to be supplemented by additional borehole logs to provide the required level of site-specific detail.' It is further stated that 'The scope and level of detail of a Minerals Resource Assessment will be influenced by the specific characteristics of the site's location and its geology, as well as the nature of the development being applied for. For clarity, an amendment is proposed to make clear that bespoke borehole information may also not be required if it can be demonstrated that prior extraction is not practical and/ or environmentally feasible without recourse to such information. However given that the volume, quality and economic value of the mineral is likely to be fundamental to most conclusions, any proposal to not include borehole investigation as part of the MRA should be agreed with the MWPA in advance.</p> <p>The proposed approach is still</p>
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			<p>have reviewed all plans to ensure they comply with the relevant policies, included assessing it from a mineral safeguarding perspective.</p> <p>For an allocation to be adopted, the plans that it is allocated in must be found to be sound by an Inspector. As part of an Inspector's consideration of a Local Plan ECC will have been invited to comment on all matters. ECC will have had ample opportunity to raise mineral safeguarding issues for all of the relevant local plans being brought forward in the county.</p> <p>The clause included in the first row of table 8 is therefore unnecessary and should be removed. It should also be noted that viability matters for allocations are now considered at the local plan stage. In addition, the timing of the delivery of new developments, particularly in relation to housing and employment facilities is a crucial benchmark against which local authorities are scrutinised.</p>	<p>considered appropriate. It is agreed that ECC is a consultee for all local plans produced in Essex and therefore will have reviewed all plans to ensure they comply with the relevant policies, included assessing it from a mineral safeguarding perspective. As part of this process, ECC does raise mineral safeguarding issues for all of the relevant local plans being brought forward in the county, and it is considered that these are raised in the most pragmatic manner. The approach is to ensure that relevant district allocation policies include the need for MRA to be carried out ahead of non-mineral development being brought forward, which essentially delays mineral safeguarding issues until such a time as developers of sites which have the potential to be allocated are provided with that certainty of allocation. As such, by way of the approach, allocated sites are 'included' with respect to the application of safeguarding policy as the relevant district policy states that</p>
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			<p>It is unreasonable for ECC to introduce further issues which will lead to the significant further costs and delays (if prior extraction was undertaken) for sites after they have been adopted.</p>	<p>this is so. To say they are 'excluded' would be to create an unconformity between policies. It is also noted that making it clear that they are 'included' avoids issues that have previously arisen where sites were not put before the MWPA and this wasn't captured until after adoption.</p> <p>It is considered that the only other approach would be for ECC to formally object to any allocations on land designated as an MSA until such a time as a suitably informed MRA is produced to either demonstrate that prior extraction is not practical or environmentally feasible, or to commit to a programme of prior extraction prior to non-mineral development taking place. This would potentially mean that an MRA, perhaps also needing to be informed by intrusive ground investigation, would need to be produced as part of site submission details through a housing related Call for Sites. This would mean that the cost of such a report, as highlighted by</p>
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				<p>the respondent, would need to be paid without the security of the site being allocated in a local plan.</p> <p>The approach to mineral safeguarding, including the need for MRA and prior extraction, has been a part of the Development Plan in Essex since 2014 and the NPPF since 2012. It is considered that the proposed amendments largely serve to offer further clarity with regards to the operation of adopted mineral safeguarding policy. As such, it is not correct to say that ECC are introducing 'further issues'. As mineral safeguarding is already part of the Development Plan, it is, by definition, compliant with the NPPF. All planning authorities must take decisions in accordance with the Development Plan unless material considerations dictate otherwise. At the site allocation stage during local plan formation, ECC requests that the local plan notes the need for mineral safeguarding</p>
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				<p>assessment to be carried out as part of the delivery of those sites which meet the criteria. As such, the proposed amendments are bringing the MLP approach into conformity with that request. It is assumed that site promoters will be aware of the need to carry out MRA, and the potential implications of prior extraction, when bringing their sites forward as the requirement is part of the Development Plan and will, presumably, form part of any site assessment by the local planning authority. There could be many years between the allocation of a site and its eventual delivery to appropriately consider mineral safeguarding issues, and it is expected that they will be considered as part of any pre-application discussions, either with the MWPA directly or district partners.</p> <p>It is reiterated that mineral safeguarding policy is not about stopping development, it is to ensure compliance with the NPPF requirement that mineral is not sterilised by non-mineral</p>
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			<p>TABLE 9: In the section that deals with the nature of the existing mineral</p>	<p>development where this should be avoided (NPPF Paragraph 210c) and that prior extraction of mineral is encouraged where practical and environmentally feasible, if it is necessary for non-mineral development to take place (NPPF Paragraph 210d). This is to be justified by the MRA, which may ascertain that prior extraction is practical in full, or in part, across all or part of the non-mineral site, including to facilitate on-site benefits such as amenity, biodiversity or SuDs provision. The conclusions of an MRA should inform Masterplanning stages of bringing a site forward rather than being considered at the last minute.</p> <p>As per previous comments, this is agreed and an amendment is proposed to make this clearer. However given that the volume, quality and economic value of the mineral is likely to be fundamental to most conclusions, any proposal to not include borehole investigation as part of the MRA should be agreed with the MWPA in</p>
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			<p>resource, in line with our comments above some clarity should be provide that an intrusive site investigation that is purely required for the MRA should only be undertaken if a desk-based assessment cannot reach an agreed conclusion with MPA.</p> <p>In addition to the constraints listed as impacting on the practicality of mineral extraction (distinct from those that would arise from the primary development), further should be included:</p> <ul style="list-style-type: none"> <li>• Impact upon rail infrastructure, particularly from a geotechnical stability perspective;</li> <li>• Tree preservation order and mature hedgerows – these can generally be built around and accommodated within the built development;</li> <li>• Impact upon public rights of way, invariably these will need to be altered to accommodate a mineral scheme, however a built development can retain these routes in situ.</li> </ul>	<p>advance.</p> <p>The schedule of requirements set out in Table 9 is not intended to scope every potential constraint, and an amendment is proposed to clarify this. However, there is merit in updating the schedule as suggested. As such, it is proposed to amend ‘Highways infrastructure’ to include ‘Highways and rail infrastructure’. It is further proposed to enter a new criteria to cover ‘Tree Preservation Orders and Mature Hedgerows where they are proposed to be retained’.</p> <p>It is not considered appropriate to include Public Rights of Way as these are often re-routed as part of mineral development. However, their re-routing could be a contributing factor to making prior extraction impractical, particularly on smaller sites. This would be for the MRA to assess.</p>
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<b>ORGANISATION</b>	<b>ON BEHALF OF</b>	<b>APPENDIX FIVE</b>	<b>APPENDIX FIVE</b>	<b>ECC RESPONSE</b>
Name of Organisation	Are you responding on behalf of another individual or organisation? - If Yes, Who?	2.Do you agree or disagree with the proposed amendments as set out in this section of the emerging Minerals Local Plan?	Please provide any comments and/or alternative wording for this section of the Plan below:	
Runwell Parish Council (631132323)	Runwell Parish Council	Agree	N/a	N/A
W H Collier Limited (769297167/ 942768790)		Agree		N/A
Blackwater Aggregates (623162177)		Agree		N/A
CEMEX (982058282)		Agree		N/A
Gent Fairhead Aggregates (871678397)		Agree		N/A
Resident (850344129)		Agree		N/A
GeoEssex (538324742)		Agree (but wish to clarify)	Requirements for Mineral Resource Assessment  Borehole and other appraisal	It would only be appropriate to request the inclusion of information that could be relevant to reaching a planning

			<p>should be in the context of the geological setting of the deposits as currently understood. Technical reports are referred to - could this more specifically refer to geological reports?</p> <p>Add Geodiversity / geological conservation to list of constraints eg SSSIs, LoGS etc.</p>	<p>decision. It is accepted that 'geological reports' could be one such 'technical report' that could provide appropriate context and therefore this amendment will be made.</p> <p>Whilst it is not considered necessary to include references to SSSIs in the list of constraints as this is covered by 'ecological designations', a separate constraint of 'geological designations' will however be added to the schedule of requirements for a Mineral Resource Assessment</p>
<p>Coggeshall Parish Council (598729813)</p>	<p>Coggeshall parish council</p>	<p>Agree (but wish to clarify)</p>	<p>This is a conclusive summary of each aspect of how to decide on where the raw material is located and how each aspect of the policy is considered . I only hope that this very careful consideration is being given to each site consultation namely the extension of the Coggeshall quarry .</p>	<p>Noted. However, the procedures set out under Appendix Five are aimed at avoiding the unnecessary sterilisation of mineral resources that do not have planning permission to extract and avoiding existing mineral infrastructure from being compromised by inappropriate proximal development established after their planning permission was originally granted. The principles set out in Appendix Five would not explicitly apply to reserves already consented for extraction</p>

				as part of the granting of planning permission, such as at a quarry, though they would determine some aspects of consultation as part of a planning application.
David L Walker Ltd (559449615)	Brice Aggregates	No comment		N/A
Strutt & Parker (891506607)	G&B Finch	No comment		N/A
Suffolk County Council (549043477)		No comment	No comment.	Noted