REPRESENTATION IN RESPECT OF
THE AUGUST 2015 SUSTAINABILITY APPRAISAL REPORT OF
THE OXFORDSHIRE MINERALS AND WASTE LOCAL PLAN: CORE STRATEGY
PROPOSED SUBMISSION DOCUMENT

1.0 INTRODUCTION

1.1 This representation on the Sustainability Appraisal (SA) report of the Oxfordshire Minerals and Waste Local Plan, Part 1 – Core Strategy Proposed Submission Document ("the Plan") has been prepared by Suzi Coyne of Suzi Coyne Planning, with legal advice provided by Christopher Boyle QC of Landmark Chambers, and is made on behalf of Mckenna Environmental Ltd.

1.2 Objection is made to the SA, on the basis that it:

- does not adequately appraise the likely environmental effects of the Plan;
- does not properly evaluate reasonable alternatives; and
- does not outline the reasons why the proposals being put forward have been selected.

As such it does not comply with the Strategic Environmental Assessment (SEA) Directive or Regulations and adoption of the Plan would be unlawful (see Save Newmarket Ltd v. Secretary of State & Forest Heath District Council [2011] EWHC 606 and Heard v. Broadland District Council, South Norfolk District Council, Norwich City Council [2012] EWHC 344 (admin)).

1.3 The concerns relate to how the alternative aggregate and waste management needs of the county have been addressed.

1.4 The following documents may be referred to as necessary during the Examination in Public:

1. All Proposed Submission Documents listed by the Council.
2. Previous Consultation Documents identified by the Council but not listed within the Submission Documents.
3. Previous Sustainability Appraisal/Strategic Environmental Assessment reports.
4. Previous versions of the Proposed Submission Core Strategy of November 2014 and March 2015.
5. Relevant Council Committee reports, Working Party papers, and background reports.
6. The Oxfordshire Statement of Community Involvement.
7. The Oxfordshire Minerals and Waste Development Schemes
8. Council's List of Waste Site Nominations.
9. Council's List of Minerals Site Nominations.
10. Council's List of Possible Minerals Sites.
11. Council's location maps of secondary and recycled aggregates.
12. Annual Monitoring Reports for Oxfordshire.

13. Duty to co-operate statement.
14. Topic Papers.
15. Council's preliminary assessment of sites.

2.0 REPRESENTATION

2.1 Background to the SA Report

2.1.1 As explained in paragraph 1.1 of the SA, the Local Plan must be subject to both Sustainability Appraisal and Strategic Environmental Assessment under the Planning and Compulsory Purchase Act (2004) and the Environmental Assessment of Plans and Programmes Regulations (2204) which implement European Directive 2001/42/EC known as the Strategic Environmental Assessment (SEA) Directive. Although both processes are mandatory, it is possible to satisfy the requirements through a single appraisal process and this is the case with the SA report of the Proposed Submission Minerals and Waste Core Strategy.

2.1.2 It is further clarified in paragraph 1.1 of the SA report that during the development of the minerals and waste planning documents the SA/SEA process has been undertaken both internally by OCC officers, and externally by appointed consultants, URS (formerly Scott-Wilson) between 2010 and 2012, and that the work undertaken by URS is integrated in the SA report where appropriate.

2.1.3 As is apparent from paragraph 5.2 of the SA report, the SA process began in August 2005 during the Issues and Options stage of preparation of the Core Strategy, when the Council identified 16 issues that should be addressed and considered a total of 95 options for doing this.

2.1.4 Paragraph 5.3 of the SA report sets out how following consultation on Issues and Options, Preferred Options were identified and subject to SA in February 2007. The previous paragraph 5.2 of the SA report explains that the recommendations from the issues and options appraisal were summarised at Section 6.2 of the February 2007 SA report, and the reasons for rejecting all of the other options considered were identified at Appendix 2 of it.

2.1.5 Paragraph 5.7 of the SA report then explains that the Council prepared spatial strategy options for all of the key waste streams, which were subject to sustainability appraisal in August 2011, and that the options assessed are detailed in Appendix C (of the current SA report).

2.1.6 Paragraph 5.9 of the SA report identifies that with regard to the next stage of the process all of the elements within the draft Waste Planning Strategy of September 2011 were assessed against the objectives within the SA Framework, as shown in Appendix C (of the current SA report).

2.1.7 Paragraph 5.11 of the SA report clarifies that all of the elements of the Proposed Submission Minerals and Core Strategy Document of May 2012 (subsequently withdrawn) were also assessed against the objectives within the SA Framework,

with a brief explanation of the effects provided in Appendix C (of the current SA report).

2.1.8 Finally, paragraph 5.12 explains that the February 2014 Consultation Draft of the Minerals and Waste Local Plan built on relevant work done in the preparation of the previous (withdrawn) plan, and was prepared taking into consideration all the iterations to the emerging options. Paragraph 5.2 of the SA report further clarifies that again all of the elements within the document were also assessed against the objectives within the SA Framework, with further detail provided in Appendix C (of the current SA report).

2.2 Inadequate Appraisal of the Likely Significant Environmental Effects of Implementing the Plan

2.2.1 The chief problem is the failure to identify and assess "opportunities lost" of other alternatives through adopting waste arisings figures, recycling targets and site capacities, which are too low, and a too restrictive locational approach.

2.2.2 There have also been a significant number of material changes in the Plan to the approaches adopted in previous versions, and the effects of these changes have not been properly addressed. For example, whilst both approaches might have been assessed individually at different times against the SA objectives, there is no evaluation in the SA report of the different approaches in comparison to each other to determine whether one of them performs better than the other, and therefore no explanation as to why the selected option in the Plan is the most appropriate.

2.2.3 Examples of the matters where these issues arise are set out under the subject heading in the following paragraphs.

Alternative Aggregates

2.2.4 Whilst the previous (withdrawn) Minerals and Waste Core Strategy 2012 policy M1 set a target for the provision of recycling and secondary aggregate production of at least 0.9 million tonnes, the current version of policy M1 seeks to "maximise" provision for recycled and secondary aggregate, but gives no target figure. The objection has been made to the Plan that given that recycling of CDE waste is the principal means by which alternative aggregates will be sourced, and in light of the inappropriate conclusions arrived at in the Plan about CDE waste arisings, recycling rates and additional recycling capacity required, the new policy will mean a significantly lower level of alternative aggregate supply would be deemed to be acceptable, than that which the previous version of the policy would have ensured. Since no minimum provision is now specified, one has to work through the figures to determine what the planned level of recycled and secondary aggregate could be, and this produces a figure of at most 735,000 tpa, though it could be as little as 470,000 tpa.

2.2.5 If the SA report had compared the two approaches taking into account the Plan's provisions as a whole, (and to do so it actually needed merely to consider that the Plan identifies a maximum possible volume of only 827,000 tpa for all types of CDE waste recycling not just for aggregate), it should have been identified that the earlier approach of ensuring a minimum of 900,000 tpa tonnes of alternative aggregates would have had a better environmental outcome and would be the preferred approach.

Policy W2: CDE Waste Recycling Targets

2.2.6 The CDE waste recycling figures within policy W2 of the February 2014 Consultation Draft of the Plan reflected those recommended by BPP Consulting in

their review of the WNA 2012 as commissioned by the Council, of 70% by 2030. The currently selected figures have, however, been lowered (to ones that the BPP Consulting review considered were quite unambitious), of only 60% by 2031.

2.2.7 The assessment of policy W2 in the current SA report is the same as it was for the equivalent policy (W3) in the previous February 2014 Consultation Draft, stating that policy W2 sets waste management targets to provide for "maximum" diversion of waste from landfill. Quite apart form the fact that this is incorrect, as the targets no longer provide for maximum diversion from landfill for CDE waste, no appraisal has been conducted of the environmental effects (i.e. the benefit forgone) of choosing a reduction in target levels; there is no equal examination of the alternatives (or of other reasonable ones), and no evidence of why the figures in the February 2014 Consultation Draft are not thought achievable.

Policy W4: The Locational Strategy for Waste Management Facilities

2.2.8 The strategy for locating new waste management facilities in Oxfordshire has varied quite significantly throughout the process.

2.2.9 The preferred approach selected for the Preferred Options of February 2007 was to identify specific site allocations with broad locations and locational criteria (recognising the difficulty of finding sites).

2.2.10 The preferred option selected for the Draft Waste Planning Strategy of September 2011 (following from the Council's spatial strategy options subject to SA in August 2011 – see paragraph 2.1.5 above) was for:

- a household waste recycling centre at Banbury, and two residual MSW transfer stations at Abingdon, Didcot, Wantage & Grove, Witney or Carterton;
- permanent C&I waste recycling plants at or close to Oxford and Banbury, Bicester, Abingdon, Didcot, Faringdon, Henley and Thame;
- a residual C&I waste treatment plant in the Abingdon, Didcot, Wantage & Grove area;
- permanent CDE waste recycling plants at or close to Oxford and the large and smaller towns in the rest of the county with temporary recycling plant at landfill and quarry sites across Oxfordshire; and
- small scale facilities to serve local needs at any location.

2.2.11 The strategy in the previous (withdrawn) Minerals and Waste Core Strategy 2012 was for:

- Strategic facilities to be located in a broad area around Bicester, Oxford, Abingdon and Didcot with facilities to serve more local needs around Witney/Carterton, Wantage/Grove and Banbury, and small scale facilities elsewhere, including a household waste recycling centre to serve Banbury and MSW transfer stations to serve the south and west of the county.

2.2.12 The strategy in the February 2014 Consultation Draft was for:

- Strategic facilities to be located in a broad area around Bicester, Oxford, Abingdon and Didcot with facilities to serve more local needs around Witney/Carterton, Wantage/Grove and Banbury, and small scale facilities elsewhere.

2.2.13 The strategy in the current Plan is for:

- Larger scale facilities to be located in or close to Bicester, Oxford, Abingdon, Didcot, Banbury, Witney and Wantage & Grove, with small scale facilities elsewhere. “Close to” is identified (within the explanatory text) as within 10km of Oxford and 5km of the other towns but not within the Green Belt or Areas of Outstanding Natural Beauty.

2.2.14 There is no assessment or comparison in any of the SA reports following selection of the initial preferred option in 2011 of the different approaches then chosen, to determine or explain why the new approach was now to be followed and why the previous proposals were no longer any good.

2.2.15 The SA assessments of these varying strategies make the same or similar comments that “Likely effects will depend upon the exact location and type of facilities and this needs to be considered as part of site selection” or “there will be differing effects according to the exact location and type of facilities”. In other words there can be no proper assessment of the effects of the policy until the precise location of proposed new capacity is determined through site allocations, and this lack of proper environmental appraisal of the Plan policy supports the objection that has been made to the Plan, that it should not be produced in two parts, but as a single document, also containing site allocations.

2.2.16 Furthermore if the SA process had been able to draw on a land availability assessment, which the Council has failed to produce, this would have shown that the current strategy for locating sites within the Oxford area, but out of the Green Belt, is not feasible or viable. The assessment of this policy in the SA report may then also very likely have lead to the conclusion, that it would have adverse environmental effects associated with waste transportation and carbon emissions, (by facilities serving Oxford having to locate some distance away at Witney, Bicester, Abingdon or Didcot) rather than the conclusion that has been drawn that it should minimise these effects. The conclusion in the SA report is based on the assumption that there would be sites available in the Oxford area, so has not been properly informed by the baseline information.

2.3 Failure to Evaluate Reasonable Alternatives and to Give the Reasons for the Chosen Proposals

2.3.1 Appendix 2 of the Preferred Options SA report of February 2007 provides a table headed "Summary of the reasons for rejection of alternative options". With regard to how the alternative options of recycled and secondary aggregate and waste management needs of the county have been addressed the entries from the relevant parts of the table are reproduced below:

Issue 5a – provision for the Supply of Recycled and Secondary Aggregates

Question 7a: How should the MWDF make provision for additional aggregate recycling facilities?	
Identify sites for temporary facilities	All part of the solution, incorporated into a sequential approach, permanent, temporary supported by locational
Identify sites for permanent facilities	
Set locational criteria	
Question 7b; How much provision should the MWDF make for aggregate recycling?	
Enough just to meet the regional targets for supply of recycled aggregates	We do not see recycling targets as a ceiling but as a minimum target
More than is required to meet these targets	Selected

Issue 5b – Where Aggregates Recycling Facilities should be Located

Question 8a: How should the MWDF make provision for additional aggregate recycling facilities?	
Sites on industrial or employment land	A combination of the options was selected and incorporated into a sequential approach.
Sites at existing minerals and/or waste sites	
Sites on previously developed (Brownfield) land	
Greenfield sites	
Question 8b; At what type of location in relation to the Green Belt around Oxford should the MWDF make provision for new aggregates recycling facilities?	
Locations in either urban areas or in areas of countryside outside the Green Belt	A combination of the options was selected and incorporated into a sequential approach
At suitable locations within the Green Belt as well	

Issue 11a – How should the Plan make Provision for Waste Management Facilities

Question 14a: What sort of locations should the MWDF identify for the waste management facilities needed?	
Broad locations	Identifying specific site allocations was preferred but recognising that this maybe difficult a combination of these options has been put forward.
Specific site allocations	
Combination of these	
Set locational criteria	

Question 14b; How should the MWDF relate locations identified for waste management facility?	
Identify locations suitable for and restricted to specified types of facility	This option would restrict the evolving development of new technologies by reducing the flexibility to accommodate future changes and developments
Identify locations more generally suitable for a range of types of facility, allowing for evolving waste management or technology	A combination of these two options has been selected.
Rule out particular types of facility which could be unacceptable for planning reasons, either at particular locations or anywhere within the county	
Question 14c: What types of sites for waste treatment facilities should the MWDF identify?	
Small number of strategic sites for large-scale waste treatment facilities or integrated groups of facilities	Option would limit local waste treatment and increase transport of waste across the County.
Larger number of more local sites for small-scale waste treatment facilities	Option would limit the types of technology available resulting in insufficient capacity to reduce waste from landfill
Mix of both	Selected

Issue 11b – Where Waste Management Facilities should be located

Question 15a: What strategy for locating waste treatment facilities should form the basis for identifying site in the MWDF?	
Within or close to main urban areas	Within or close to main urban areas is preferred but a combination of these options has been put forward in a sequential approach recognising the difficulty of finding sites close to main urban areas.
More rural locations away from centres of population	
Question 15b; What sort of sites should the MWDF identify to provide for waste treatment facilities?	
Sites on industrial and employment land	A combination of these options has been put forward in a sequential approach recognising the difficulty of finding sites.
Sites and existing waste management sites	
Sites on previously developed (Brownfield) land	
Greenfield sites	
Question 15c: At what type of location in relation to the Green Belt around Oxford should the MWDF make provision for waste treatment facilities?	
Either in urban areas or in areas of countryside outside the Green Belt	A combination of these options has been put forward in a sequential approach recognising the difficulty of finding sites.
At suitable locations within the Green Belt as well	

2.3.2 It is apparent from the above that whilst some reasoning is given as to the selection of the preferred approach going forward in the plan preparation process, full reasons have not been clearly given either for rejecting or selecting options. In addition no alternative options are considered for issues such as waste quantities, recycling targets, capacity requirements and landfill requirements, contrary to the SEA Directive and Regulations.

2.3.3 The SA report of the spatial strategy options for all the key waste streams from August 2011 appraises the following options:

- One Option for recycling of municipal waste (MSW);
- One Option for residual waste transfer stations for MSW;
- Options A-D for recycling commercial & Industrial (C&I) waste;
- Options A & B for residual treatment of C&I waste;
- Options A-B for recycling of construction, demolition and excavation (CDE) waste;
- One option for inert landfill;
- Options A – B for hazardous landfill;
- Options A & B for intermediate level radioactive waste storage;
- Options A – D for local level radioactive waste management

2.3.4 The report provides assessment matrices in an Appendix, which summarise how each option performs against the SA objectives, but does not identify any reasons for or come to any conclusions about selecting or rejecting alternatives. As is apparent from the above list, no alternative options are considered for MSW recycling, MSW residual waste transfer or inert landfill, and no options are considered at all for MSW/C&I waste composting/treatment or for non-hazardous landfill. Therefore for MSW recycling, MSW residual waste transfer and inert landfill no reasonable alternative spatial options have been considered and this is contrary to the SEA Directive and Regulations.

2.3.5 Furthermore, the options for recycling/transfer of MSW/C&I waste do not correspond to the spatial strategy now selected for the Plan, but there has been no comparison of the new preferred approach with these alternatives previously considered, or any reasons given in the SA report as to why they are no longer being pursued. Therefore the current Plan has not been subject to the correct SA process..

2.3.6 Appendix B of the SA report of the previous (withdrawn) Minerals and Waste Core Strategy 2012 provides a “Summary of Options Considered and the Sustainability Appraisal of Options and Preferred Policies.” From the table in this appendix it is apparent that, whilst the reasons for the preferred approach in that Plan are given, alternative options were not always considered for all the policy elements, contrary to the SEA Directive and Regulations.

2.3.7 At Chapter 5 the SA report of the February 2014 Consultation Draft contained Table 5-1: Issues and Options considered in the SA – June 2006, listing 16 issues that the Core Strategy was to cover and between 2 – 4 options for addressing each of these issues. (29 options are listed of a total of 95 options originally). Box 1 then contains the recommendations from the Interim SA, but this does not identify which alternatives should be preferred. The reasons for rejecting options, where alternatives are discussed, are also not identified.

2.3.8 In relation to any assessment of options, or reasonable alternatives, Chapter 5 of the February 2014 Consultation Draft then only contains at:

- Table 5-2 - summaries of the preferred options of the Minerals and Waste Core Strategy from February 2007 and the significant effects identified; and
- Sections 5.4 to 5.7 - summaries of the Minerals and Waste Spatial Strategy and Aggregates Apportionment Options (May 2010 – August 2011) and the significant effects identified; and
- Section 5.10 – summaries of the Aggregates Apportionment Options Addendum (March 2012) and the significant effects identified. There is a comparison of the options, but no reasons for selecting or rejecting any particular option.

2.3.9 These elements of Chapter 5 are also produced at Appendix C (Development of the Local Plan) of the current SA report.

2.3.10 From all of the above it is apparent that in respect of waste management needs, the only alternatives that have been assessed relate to where new waste management infrastructure should be located, whether this should be done through identification of sites and/or locational criteria, and what size of sites should be provided. There has been no assessment of reasonable alternatives for other elements of the Plan, for example in relation to:

- Quantities and sources of waste to be managed;
- The levels that waste recycling targets should be set at;
- The level of provision for new waste management capacity that should be made to ensure that actual supply of the targeted recycling levels will be achieved;
- The options for recovery in permanent deposit of inert waste on land; and
- The options for safeguarding sites for waste management and mineral infrastructure.

In addition no overall firm conclusions were actually reached with the exception of the approach to the provision of recycled/secondary aggregate. (Appendix 2 of the Preferred Options SA report of February 2007, Box 1 of the Issues and Options SA at Appendix C of the current SA report, and SA of Waste Spatial Strategy Options (August 2011)).

2.3.11 With regard to recycled/secondary aggregates the original Issues and Options SA of June 2006 considered that over-provision of regional targets for aggregate recycling should be selected. The reason given for this in Appendix C to the

current SA report (end of Minerals recommendations in Box 1) is that it "seemed to be more positive in developing a sustainable strategy" yet this is not the approach now being followed. There has been no assessment of the current "preferred approach" against the alternatives previously considered, or why the initial position has now been rejected.

2.3.12 This is not the only instance of where the previously identified preferred approach is no longer the case with the current Plan, examples of which are identified in the table below

Table 1: Earlier Preferred Option Versus the Approach Adopted in the Current Plan

SA Report	Selected Option	Current Approach
February 2007	Provision of more aggregate recycling than is required to meet regional targets.	Provision for recycled and secondary aggregate supply at levels lower than regional targets.
February 2007	Identifying specific site allocations for waste management facilities with broad locations and locational criteria.	No site allocations (in the current Plan) with identification of specific defined areas at and close to Oxford, Banbury, Bicester, Abingdon, Didcot and Wantage/Grove for larger scale facilities with small scale elsewhere.
February 2007	New waste management development to be provided on industrial/employment land, existing/minerals and/or waste sites, previously developed land and green field land in a sequential approach.	Presumption against use of green field land for waste management development
February 2007	Provision for waste treatment facilities to be either in urban areas or countryside and within the Green Belt in a sequential approach.	No provision for larger scale facilities in rural areas or in the Green Belt (unless very special circumstances apply).
August 2011	HWRC at Banbury and 2 residual MSW transfer stations in south and west of the county.	No specific provision for MSW facilities.
August 2011	Permanent C&I waste recycling plants at or close to Oxford, Banbury, Bicester, Abingdon, Didcot, Faringdon, Henley and Thame.	No specific provision for C&I waste recycling and no provision for larger scale facilities at Faringdon, Henley or Thame.
August 2011	Permanent CDE waste recycling plants at or close to Oxford and large and small towns with temporary facilities at landfill and quarry sites	No specific provision for CDE waste recycling plants and no provision for larger scale facilities at small towns.

2.3.13 The failure to properly consider alternatives and analyse why various previously preferred approaches are no longer as good as the proposals now being put

forward has contributed to the causes of the inadequate appraisal of the likely significant effects of implementing the aspects of the Plan identified at Section 2.1 above.

2.3.14 The Government's National Planning Practice Guidance (NPPG)[1] states as follows so far as the comparison with reasonable alternatives is concerned:

"The sustainability appraisal should identify any likely significant adverse effects and measures envisaged to prevent, reduce and, as fully as possible, offset them. The sustainability appraisal must consider all reasonable alternatives and assess them in the same level of detail as the option the plan-maker proposes to take forward in the Local Plan (the preferred approach).

Reasonable alternatives are the different realistic options considered by the plan-maker in developing the policies in its plan. They must be sufficiently distinct to highlight the different sustainability implications of each so that meaningful comparisons can be made. The alternatives must be realistic and deliverable.

The sustainability appraisal should outline the reasons the alternatives were selected, the reasons the rejected options were not taken forward and the reasons for selecting the preferred approach in light of the alternatives. It should provide conclusions on the overall sustainability of the different alternatives, including those selected as the preferred approach in the Local Plan. Any assumptions used in assessing the significance of effects of the Local Plan should be documented.

The development and appraisal of proposals in Local Plan documents should be an iterative process, with the proposals being revised to take account of the appraisal findings. This should inform the selection, refinement and publication of proposals (when preparing a Local Plan, paragraph 152 of the National Planning Policy Framework should be considered)."

2.3.15 Paragraph 152 of the NPPF, referred to immediately above, states as follows under the heading "Local Plans":

"Local planning authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development, and net gains across all three. Significant adverse impacts on any of these dimensions should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where adverse impacts are unavoidable, measures to mitigate the impact should be considered. Where adequate mitigation measures are not possible, compensatory measures may be appropriate."

2.3.16 It is evident therefore that the SA process, in not even fully identifying reasonable alternatives and then not outlining the reasons for selecting the preferred approach, is fundamentally flawed.

[1] Paragraph 018 of Strategic environmental assessment and sustainability appraisal: Sustainability appraisal requirements for Local Plans.

2.3.17 Moreover, it should not have been a case of having to look through former iterations of the SA to determine whether the SA had been carried out in accordance with the relevant planning and environmental assessment legislation.

2.3.18 The case of Heard v. Broadland District Council, South Norfolk District Council, Norwich City Council [2012] EWHC 344 (admin), which draws on the findings of Collins J in Save Historic Newmarket Ltd v. Secretary of State & Forest Heath District Council [2011] EWHC 606, considered the legislative requirements in relation to SA. These judgments held that:

- The alternatives should be appraised to the same level as the preferred option;
- The final Sustainability Appraisal report must outline the reasons why various alternatives previously canvassed are still not as good as the proposals now being put forward in the plan; and
- The reasons for rejecting any reasonable alternatives must still be valid.

2.3.19 Quite apart from the question of whether reasonable alternatives have at all been assessed, the outline reasons for the selection of any alternatives at any particular stage has not been clearly given, and there has been no discussion within the SA of why the preferred option came to be chosen, nor has there been any analysis on a comparable basis of the preferred option and selected reasonable alternatives. There is no evidence that these requirements have been met throughout the SA process and they are not apparent in the final SA report, which the judgements have ruled must be the case.

2.3.20 This means then that the plan-making process with regard to the Oxfordshire Minerals and Waste Local Plan is not legally compliant.

2.3.21 It also leads to the conclusion that the Plan does not meet the second test of soundness, that it is justified, (paragraph 182 of the NPPF), because it cannot be said that the Plan is the most appropriate strategy when considered against the reasonable alternatives based on proportionate evidence.