Suffolk Minerals & Waste Local Plan
Statement of common ground
Associated British Ports

June 2019
Contact

Graham Gunby
Development Manager
Growth, Highways & Infrastructure Directorate
Suffolk County Council
8 Russell Road
Ipswich
Suffolk IP1 2BX

Tel: 01473 264807
Email: smwlp@suffolk.gov.uk
Website: www.suffolk.gov.uk

For more information about our minerals and waste planning policy go to:

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1. **FORMAT**

1.1 This document sets out the representations made by Associated British Ports to the Submission Draft Suffolk Minerals & Waste Local Plan. A response is made to each representation by Suffolk County Council. Proposed changes are made in bold type.

1.2 At the time of writing all of the objections made by Associated British Ports still remain although Suffolk County Council and Associated British Ports are continuing discussions with a view to concluding an updated SOCG prior to the hearings.

_G. Gunby_  
Graham Gunby  
Development Manager  
Suffolk County Council

_P. Rowell_  
Philip Rowell  
Director  
Adams Hendry Consulting Ltd  
(for Associated British Ports)
2. **MINERALS POLICIES**

**POLICY MP9: SAFEGUARDING OF PORT AND RAIL FACILITIES, AND FACILITIES FOR THE MANUFACTURE OF CONCRETE AND ASPHALT**

<table>
<thead>
<tr>
<th>Reference Number</th>
<th>Respondent</th>
<th>Legally compliant?</th>
<th>Sound?</th>
<th>Compliance with duty to co-operate?</th>
<th>Representation</th>
<th>SCC Response</th>
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</thead>
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| 90819480         | Mr Philip Rowell (received via email), Director, Adams Hendry Consulting Limited (for Associated British Ports) | -       | No     | -                                 | The submission draft local plan, through policies MP9 and WP18, seeks to safeguard the following specific sites within the statutory Ports of Lowestoft and Ipswich for particular minerals and waste purposes, namely:  

**Port of Ipswich**

- Cliff Quay (Site ref W1 and AP3 – Wharf and Asphalt Plant);  
- West Bank Waste Transfer Station (Site Ref WT4 – Waste Transfer Station); and  
- West Bank Terminal (Site ref W4 and R4 – Wharf and Rail Head).

**Port of Lowestoft**

- Hamilton Dock (Site W2 – Wharf), and  
- North Quay (Site W3 – Wharf)  

This is an unsound position, for the reasons now summarised.  

The two Ports of Lowestoft and Ipswich are owned and operated by Associated British Ports (ABP). For the purposes of planning matters, ABP is a statutory undertaker (as defined in section 262 of the Town and Country Planning Act 1990) and the port land owned by ABP constitutes operational land of a statutory undertaker (as defined in section 263 and 264 of the 1990 Act). As such, the two ports benefit from extensive permitted development rights that enable port operations to react to the needs of the market in| The National Planning Policy Framework in paragraph 143 is clear that minerals planning authorities should set out policies which safeguard existing, planned and potential wharfage and associated storage, as well as existing and planned concrete batching plants. facilities creating coated materials, other concrete products, and secondary recycled aggregate plant. To not include these policies would make the plan unsound as they would not align with national planning policy. Additionally National Planning Practice Guidance states that these sites should be safeguarded in order to ensure that sites are available should they be needed.  

It is noted that these issues were not raised during the previous stages of consultation and that previous to that discussions with ABP indicated that these sites were accurate. |
an efficient and timely way. The Ports are, therefore, dynamic – and often fast changing – land uses.

The Ports need to be able to react to the needs of the market in this way – and, therefore, rely upon their extensive permitted development rights - because of the nature of the industry within which they operate. This is best explained by having regard to the Government’s policy for ports, which is contained in the National Policy Statement for Ports (DfT, 2012) (NPSIP) (a national policy document to which the Local Plan should have regard).

Amongst other things, the NPSIP makes it clear that it is Government policy to “allow judgements about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment” (paragraph 3.3.1). This position – which is a continuation of the ‘market led’ ports policy position which has been in place for some time – is further emphasised in the context of the policy identifying that an element of overall need for port infrastructure is that capacity is provided in the right place. In respect of this matter the NPSIP highlights that it is not for public bodies such as Government to dictate where port development and capacity should be provided (paragraph 3.4.12).

In terms of the need for capacity and development, the NPSIP makes it clear that this depends not only on demand, but also on the need to retain flexibility that ensure that port capacity is located where it is required, and on the need to ensure effective competition and resilience in port operations.

In addition to the policy context within which the Ports of Lowestoft and Ipswich function, it is also necessary to understand the legislative context. In addition to being a statutory undertaker, ABP is also the statutory harbour authority for the two Ports and has to operate the two ports in accordance with both general and port specific legislation. Of note is that both ports are required to operate in
accordance with an aspect of legislation commonly known as the ‘open port duty’.

This duty is founded in section 33 of the Harbours, Docks and Piers Clauses Act of 1847, which states:

“Upon payment of the rates made payable by this and the special Act, and subject to the other provisions thereof, the harbour, dock, and pier shall be open to all persons for the shipping and unshipping of goods, and the embarking and landing of passengers.”

In simple terms, the duty is one that provided that the trade is legal and the necessary rates and dues are paid, the two Ports must be open to all for the shipping and unshipping of goods and the movement of passengers.

Against this – albeit very brief – background summary, it is clear that it is unsound for the Council through the emerging Minerals and Waste plan to seek to safeguard land and facilities within these Ports for a particular minerals or waste related trade or use, whilst those sites form and remain part of a statutory port estate.

Such safeguarding could only be said to be sound in circumstances where the sites in question were to be sold off or somehow made available by ABP for non-port / port related development. ABP has no intentions to take such steps in respect of the sites in question or any other parts of the statutory Lowestoft and Ipswich port estates.

Having said this, however, ABP wishes to make it clear that its concern over the potential safeguarding of sites within its operational port areas does not mean that it is saying the sites in question are necessarily unsuitable for minerals and waste purposes. For example, in respect of Wharf Site W3 within the Inner Harbour area of the Port of Lowestoft, ABP is currently giving active considerations – along with potential customers – to its use for the import of aggregate, a use for which ABP consider there to be a clear demand. However, conversely, there is no prospect – currently or in the
foreseeable future - of wharf site W2 within the Port of Lowestoft being used for a minerals or waste purpose as this is in use for an alternative port related purpose.

Having regard to the fact, therefore, that some sites within the two ports may well be used for minerals and waste purposes during the plan period, ABP does welcome and support the aspect of policy MP9 which seeks to ensure that the use of existing or potential sites and facilities – including those existing or potential sites within the two ports - is not adversely impacted upon by other development proposals occurring in proximity to them. ABP further supports the requirement set out in policy MP9 that necessary mitigation - in the form of satisfactory alternative facilities – should be made available by those promoting the development causing the adverse impacts for the handling facility.

However, in respect of existing or potential sites and facilities within the operational ports, the protection / mitigation requirements set out in the policy can clearly only be applied in respect of third party non-port developments outside of the port area – and, for the reasons set out, clearly not other port related developments within the port area - or in circumstances where ABP was to somehow dispose of the site in question or make it available to non-port / port related use.

Policy MP9 needs to be amended along the following suggested lines. Additional text is shown in bold italicised text and deleted text is shown crossed through.

‘Policy MP9: Safeguarding of port and rail facilities, and facilities for the manufacture of concrete, asphalt and recycled materials

When proposals are made which would result in the loss of or might potentially compromise the use of:

a) an existing, planned or potential rail head, wharf or associated storage, handling or processing facilities for the bulk transport by rail or sea of minerals, including recycled,
secondary and marine-dredged materials, that is not located on operational port land and/or;

b) an existing, planned or potential site for concrete batching, the manufacture of coated materials, other concrete products or the handling, processing and distribution of substitute, recycled and secondary aggregate material that is not located on operational port land;

applicants will be required to demonstrate to the County Council that those sites no longer meet the needs of the aggregates industry. Where this is not the case, satisfactory alternative handling facilities should be made available by the developer. Development proposals in close proximity to the above minerals related facilities should demonstrate that they would not prejudice or be prejudiced by those facilities.

In respect of facilities or potential facilities located on operational port land, the requirements in the preceding paragraphs will only apply in circumstances where:

(i) an existing or potential facility on operational port land is potentially impacted upon by a third party non-port related development; and / or

(ii) where the statutory port authority sells off the site in question or makes it available for non-port and port related development.

Any mitigation required falls on the development that receives planning permission last.

District and Borough Councils should consult the County Council when a potentially conflicting proposal falls within the 250 metre safeguarding zones as defined in the Appendix 3 Safeguarding Maps. The County Council will then refer to Policies MP9 before providing a consultation response.’

To assist the reader of the Plan, it is also suggested that a paragraph of explanatory text is added after paragraph 5.44
to explain the position further. Wording along the following lines is suggested:

‘5.44 Some facilities of relevance to policy MP9 are located within the statutory Ports of Ipswich and Lowestoft. Having regard to both the national policy of relevance to ports – currently contained within the National Policy Statement for Ports – and the legislative framework within which these ports have to operate it is not possible to safeguard facilities or sites within the ports for a particular minerals or waste use in the same way as it is on other sites. Policy MP9 makes this distinction in respect of the circumstances in which the policy requirements will be applied.’

Finally, and again to assist the reader of the Plan, it is suggested that the sites located on operational port land are distinguished in the list of safeguarded sites provided at Appendix 3 of the Plan. In this way, the reader of the plan can understand which sites the different provisions of policy MP9 apply. It is also necessary for the relevant insets to the policies map (Maps W1 and I1) to distinguish these sites from the others shown.

However, site W2 should be deleted from plan W1 as this area, within the Port of Lowestoft operational area, is in active use for other port related activities and there is no prospect - currently or in the foreseeable future – of this site being used for a minerals or waste related purpose.
### 3. Waste Policies

**Policy WP18: Safeguarding of Waste Management Sites**

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| 90819480         | Mr Philip Rowell (received via email), Director, Adams Hendry Consulting Limited (for Associated British Ports) | - | No | - | This representation needs to be read alongside the ABP representation submitted in respect of policy MP9. For the reasons explained, in summary, in that representation, it is unsound for the Council through the emerging Minerals and Waste plan to seek to safeguard land and facilities within these Ports for a particular minerals or waste related trade or use, whilst those sites form and remain part of a statutory port estate. Having said this, however, ABP does welcome and support the aspect of policy WP18 which seeks to ensure that the ongoing use of the facilities listed – including those within the two ports - is not adversely impacted upon by other development proposals occurring in proximity to them. However, as indicated in the representation on policy MP9, such protection can only be applied to sites within an operational port in certain circumstances. Policy WP18 needs to be amended along the following suggested lines. Additional text is shown in bold italicised text and deleted text is shown crossed through. **‘Policy WP18: Safeguarding of waste management sites**

The County Council will seek to safeguard existing sites and sites proposed for waste management use that are not located on port operational land as shown on the Proposals & Safeguarding Maps and will object to development proposals that would prevent or prejudice the use such sites for those purposes unless suitable alternative provision is made. The NPPW in para 8 states that “When determining planning applications for non-waste development, local planning authorities should, to the extent appropriate to their responsibilities, ensure that: • the likely impact of proposed, non-waste related development on existing waste management facilities, and on sites and areas allocated for waste management, is acceptable and does not prejudice the implementation of the waste hierarchy and/or the efficient operation of such facilities.” Therefore the policy should remain as written.
Development proposals in close proximity to existing sites that are not located on port operational land, should demonstrate that they would not prejudice or be prejudiced by a waste management facility. The safeguarding policy will also apply to any site where planning permission has already been granted.

In respect of existing or potential waste management sites and facilities located on operational port land, the requirements in the preceding paragraph will only apply in circumstances where:

iii. an existing or potential site or facility on operational port land is potentially impacted upon by a third party non-port related development; and / or

iv. where the statutory port authority sells off the site in question or makes it available for non-port and port related development.

Any mitigation required falls on the development that receives planning permission last.

District and Borough Councils should consult the County Council when a potentially conflicting proposal falls within the 250 or 400 metre safeguarding zones as defined in the Appendix 3 Safeguarding Maps. The County Council will then refer to Policies WP18 before providing a consultation response.'

It is also suggested that a paragraph of supporting text after paragraph 6.34 is inserted, and the relevant waste management site that is located on port operational land is distinguished in the list of sites provide at Appendix 3 of the Plan and on the policies inset plan Map I1.