

Part B – Please use a separate sheet for each representation

3. To which part of the Local Plan does this representation relate?

Paragraph

See text

Policy

Policies Map

4. Do you consider the Local Plan is:

Please tick as appropriate

4 (i) Legally Compliant

Yes

☐

No

☒

4 (ii) Sound*

Yes

☐

No

☒

4 (iii) Complies with the Duty to co-operate

Yes

☐

No

☒

*If you have entered No to 4 (ii), please continue to 5. In all other circumstances, please go to question 6.

5. Do you consider the Local Plan is unsound because it is not...:

(i) Justified

☐

(ii) Effective

☒

(iii) Positively prepared

☒

(iv) Consistent with National Policy

☒

6. Please give details of why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate. Please be as precise as possible. If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to co-operate, please also use this box to set out your comments

ALL Comments are directed to the Silica Sand Site Selection Process

F. MINERAL PLANNING AUTHORITY RESPONSE TO PUBLIC CONSULTATIONS.
 (i) LETTER TO CHIEF EXECUTIVE.
 (ii) AVOIDANCE OF PUBLIC ACCOUNTABILITY IN THE PUBLIC CONSULTATIONS

SEE ATTACHED.

(Continue on a separate sheet if necessary)

6A. Letter to the N.C.C. Chief Executive concerning Silica Sand Site-selection Issues over Shouldham Warren (AOS E) and the Improper Data Suppression

The August 13, 2020 letter brought a number of issues related to maladministration within the NMWLP processes to the attention of the Chief Executive. The data has proven unacceptable to the MPA and they have not found the light of day within the Plan process, as statutorily required. There is no reference to these issues within the NMWLP, 2022, document, or elsewhere in the record. I will present it without comment as I believe it is self-explanatory, and the issues have been covered in passing elsewhere in this submission. The implications regarding the integrity of the silica sand site-selection processes in the Local Plan are not attractive. The information is illustrative of how the public common has been at serious disadvantage in this Norfolk Statement of Community Involvement-driven process.

August 13, 2020

Tom McCabe
Executive Director of Community and Environmental Services
Norfolk County Council
County Hall
Martineau Lane
Norwich NR1 2SG

Dear Mr. McCabe,

Thank you for your letter dated June 10 2020. I remain concerned that the processes adopted by Norfolk County Council's Minerals and Waste Review Process For the Single Issue Silica Sand Acquisition. fail to adequately investigate the public interest and public utility in the AOS E and SIL 02 contiguous sites at or adjacent to Shouldham Warren.

Allow me to set out what I understand to be the official position with regard to the assessment of public utilities at the sites. I am depending upon the cumulative documents on the dedicated Council website. It is necessary to dig through a large number of technical files to find this information, and it is clear that no real attempt to explore the public interests in Shouldham Warren and its environs has been integrated on your processes. I will be specific, and so if I am wrong, any mis-statements can be corrected evidentially.

The sole informing regulation I could find was under Section 8 of the published General Policies for this development, entitled Development Management Criteria: Recreation. It is stated (full quotation):

"The Public Rights of Way (PROW) network provides an important means of accessing the countryside. Where relevant, applications for minerals or waste management development will be required to ensure that PROW remain usable at all times or provide satisfactory alternative

routes. Alternative paths and any necessary diversions of existing paths will be required to be in place prior to the closure of the existing PROW. Restoration schemes should, in the first instance, be seen as an opportunity to enhance and upgrade PROW where possible, especially with regard to the provision of Bridleways as multiuser paths as part of any permission granted. In all cases, restoration schemes should provide for access which is at least as good as that existing before workings began.

The closure of a PROW, where no alternative route is provided, will not normally be acceptable.

Local recreation assets, including Public Open Space and other outdoor facilities such as country parks, are protected in District, Borough and City Local Plans. Open Access Land is designated through the Countryside and Rights of Way (CROW) Act 2000. Minerals and waste management proposals will be expected to mitigate any unacceptable impact on such designations."

1. Consideration of the Public Utility of the Land for Recreation:

In the General Policies document, the interests of all other stakeholders have a formal opportunity to engage strategically in the extensive procedures undertaken, including the land use as forestry. This this was not extended to the extraordinarily wide public usage of the land for recreation. The sole criteria provided under the heading of "Recreation" is an undertaking on Public Rights of Way. An opportunity to forward comments is no guarantor of proper consideration (see below). The specific public recreational interests in the site are to be formally and comprehensively disregarded. In actual fact, Shouldham Warren is probably the most extensively used recreational facility in rural West Norfolk.

The only issues under review are an undertaking to maintain 'registered' PROW, if feasible, with an unspecified 'restoration scheme' for those permanently lost to the resultant reduction of the elevated site to an enormous pit and lake. [Open Access Land is also to be preserved, but as the Warren is leasehold land, it is not Crown Land and this statement is not applicable.] The issue of how rights of way across a large elevated area of considerable physical attribute can be recreated or satisfactorily bypassed when the landmass is reduced to a pit or lake is judiciously avoided.

There is nowhere an evaluation of how and how intensively the public uses this regional resource. In effect, the Minerals and Waste procedure maintains that the Warren only provides land usage for forestry. The public are spread out all over the Warren right across the extensive network of paths, trails, and roads. Numerous recreational communities use the site regularly including the villagers of several local communities, recreational walkers, dog walkers, cyclists, mountain bikers, horse riders, harness-carriage riders, orienteers, runners, athletes in training, naturalists, bird watchers, photographers, picnickers, schools, and others.. Why is there no formal inquiry into the public land use? Whenever I go to Shouldham Warren in daylight hours, there have never been less than one or two dozen cars at the main Shouldham Warren parking lot, with numerous other parking spots scattered around the site unexamined. At peak times, there are multiples of this.

I do not believe that N.C.C can ignore the land use of the area under question for public recreation.

An additional relevant insight is that the public have used the Warren site for several decades as of right without hindrance. Before these current events came to the knowledge of the public, almost all users had been unaware that it was not owned by Forestry England, which would assure its general access. It is in fact on a 999-year lease from the Stow Hall Estate, but without any relevant signage; this was uncommonly known. The Nar Valley Way long-distance route is also directed through the centre of Shouldham Warren.

I have not found any understanding or analysis of landscape history as it pertains to the site. The fact that for several centuries it has been regarded as 'waste of the manor' is important as it helps to explain the numbers of highways across it. Droving was an important industry in Norfolk over several centuries, owing to the need for weeks of months of conditioning pasturage. The historical record before the beginning of the 19th century is deficient, but the main droving road into Norfolk from its portal in Setchey (also on the River Nar) almost certainly was along a drove road established on the south bank of the River Nar, later to become the Towpath on the River Nar navigation. The large number of drove roads in what was formerly an area interspersed with Fen is a reflection of the fact that most droving herds into Norfolk would pass close by, and undoubtedly utilised the lowland heath (before the warren) which was the original landform. Its history of a warren was only for a 40 year-period, did not have a royal warrant, only occupied a central and paracentral position within the area now called the Warren, had no buildings on the site, and appears only to have had a retaining (?rabbit-proof) fence around its central location, without the customary banking. The short-lived warren was replaced by enforestation over a 35-year period that involved only the area within the old circumferential fence. The peripheral, un-warrened area was perhaps half the total and presumably still 'waste of the manor.' In 1946, shortly after the 1943 (WWII) Forestry Commission-leasing of the Warren, aerial photographs show the site to be almost completely cropped of forestry and restored to the appearance of a 'waste of the manor,' as open, uncultivated, and unoccupied. A 999-year lease, apparently on a peppercorn rent, further supports that notion.

2. Established PROW vs Actual PROW

The regulations stated in the General Policies go on to dilute the undertaking to maintain PROW by apparently limiting that assurance to "existing" PROW.

You state in your letter the following, "Until the DMMO application has been determined by the LOR (Legal Orders and Registers) Team (or the Planning Inspectorate if required) then the land in question is not a Public Right Of Way." This, I believe, is a wrongful interpretation of the law. Any public rights of way under Common Law maintain their existence in perpetuity (until January 1, 2026) unless specifically extinguished by a legally-valid stopping-off order, and without rededication. A public right of way is therefore a property of the highway itself, registered or unrecognised, and is not defined by the internal procedures of the individual Surveying Authority. The DMMO processes are an administrative mechanism to provide a formal venue in which the evidential conclusions can be made, but the Surveying Authority does

not in this matter 'make' the PROW - which already exist in its own right. It is therefore, I suggest incumbent upon N.C.C to determine the actual public rights of way in advance of the Planning Process, which I understand has been on-going for several years already.

It would also appear disingenuous to endeavour to exclude unregistered PROW across this large site for a number of other reasons. Fourteen putative public rights of way are now identified across AOS E and SIL 02. It is not clear from the project documentation as to what are the registered PROW that are at risk on the sites. Only one highway is identified for SIL 02, but there is no stipulation for AOS E, although 2 or 3 are shown on a recent process map. What therefore is to be the status, for example, of Pentney Drove, its crossing of the River Nar at Pentney Mill Bridge, the Nar Valley Way along the River Nar south bank, and Marham FP9 (Fen Lane Drove), all of which are included in the proposed mining area. Furthermore, all registered PROW over this area appear to have under-registered rights of way. There are several rights of way exclusively reported on Forestry England maps as unregistered highways. The Forestry Commission is obligated under law to maintain rights of way across their land, an undertaking that appears often overlooked. I recognise this may not be pertinent on freehold forestry land, but the duty would then fall on N.C.C, as the surveying authority, to keep the Definitive Map under continuous review in accordance with the Wildlife and Countryside Act 1981 s 53.

The assertion in your letter that the DMMO procedures on these 14 highways must be completed before the true public rights of way on AOS E and SIL 02 can be considered in the silica sand mining application appears improper. It appears based upon the internal realities known fully within your Department that none of them is likely to find consideration in the next 15-20 years, at the current declared ability, is to manage 5 applications a year. Although 39 were submitted between October 2019 and March 2020, none have yet been accepted as valid applications and appeared on the N.C.C DMMO website, despite the announced intention to clear the backlog of acceptances during the Covid-19 lockdown, when new applications have been inhibited by lack of access to record resources.

3. Consideration of Evidence for PROW involved in the Review Process For the Single Issue Silica Sand Acquisition Process:

Despite my formal written applications to the Minerals and Waste Team that the DMMO application copies sent to them be considered in the entirely separate context regarding their relevance in the process at hand. The initial response was to deny the existence of the direct submission - on the basis that it was a DMMO - when it was clear that a DMMO had been submitted separately. This was a conceit, and repeated with each submission that I made, which were disregarded, and remained unanswered. An explanation is provided, that I had failed to request replies, which, in the context of a formal statutory process, is alarming. Indeed, I explained that the highly-documented DMMO applications were active internal procedures with Norfolk County Council and as a consequence it would be irregular for Minerals and Waste to attempt to claim that this information did not exist, as you explain it, for the next 15-20 years! As the data is with another branch of your Division, it appears disingenuous to deny that they exist. Furthermore, the considerable relevance to the Silica Sand procedures would I suggest

dictate that they be adjudicated forthwith, in case an apparently deliberate absence of data could influence a result.

You are well aware of the formidable efforts required of volunteers to put one DMMO application together. It is unreasonable, I would suggest, that the Surveying Authority was proceeding with a public planning consultation over land extensively used by the public for recreation in which those public rights had been disregarded, and the obligation to assess the nature and extent of PROW across that land also disregarded. I will consider the nature of the public communications on these issues below, but I was faced with the problem of the non-elucidation of the public rights of way with one week before your public consultation deadline. It took 4 months of concentrated work to assemble the data, when I think it very likely that you were obliged to do so as a Surveying Authority in the early stages of the Planning process.

4. What Avenues are being Provided to Assess The Public Interest over the SIL 02 and AOS E Silica Sand Proposal Land?

It is true, as far as I can ascertain, that there is no formal process available to the public within the General Rules to properly establish the public recreational interest in Shouldham Warren as would be appropriate to its status as the centre of West Norfolk countryside activities.

Further confirmation of the rules being adopted can be found in a docket of responses to the first consultative process in 2018, published on the internet in July 2019. The selection of AOS E (Shouldham Warren +) had not been made at the time of the initial consultation which occurred between the two consultations. The selection of AOS E occurred at the suggestion of Sibelco, the proposed Belgian-owned contractee for silica sand extraction,. This late decision by N.C.C. effectively nullified much of the anticipated structure of the project (2014-18) as the site had initially been rejected, principally over MOD concerns over increased risks of bird strike at the nearby Marham RAF and AAF base. The second consultation has allegedly generated 4,000 public responses, at least according to CATSS; this apparently is the record number of public responses on a (?) Minerals planning decision, but the N.C.C. responses await publication. The public response to date is therefore limited to the County responses to informal statements submitted prior to 2018 when Shouldham Warren was not part of the proposal.

For example in the first "consultation," the N.C.C Planning Officer was posed with this this question, "The threat to recreational activities: not only is The Warren used by many of the villagers on a daily basis, people come from all over to walk, bird watch, horse ride and cycle. There are also many clubs/organisations that use it to enhance their lives. Would this be hindered in any way?" stimulated the following response:

"The area of search includes Shouldham Warren. It is noted that public access is permitted in Shouldham Warren and it is used by many local residents for recreation. There is legislation (s.261 of the Town and Country Planning Act 1990) to allow the temporary diversion or stopping up of a Public Right of Way for mineral extraction.

Any future planning application for mineral extraction would need to address the location of existing footpaths and public access. There have been multiple examples of mineral extraction sites in Norfolk, where similar issues regarding PROWs have been successfully addressed."

Note that the sole reply comprises discussion of PROW as physical entities and ignores completely the recreational implications of the question.

And again, "Apart from that, the Warren is a well used recreational facility for people living in the area and others who visit specifically to cycle, run, etc. and it is much valued by all of us." This is followed by the following response from the N.C.C. Planning Officer, "There is legislation (s.261 of the Town and Country Planning Act 1990) to allow the temporary diversion or stopping up of a Public Right of Way for mineral extraction. Any future planning application for mineral extraction would need to address the footpath location. Alternatively, a phased extraction may allow for the existing footpath to be retained, this would be a matter for a future planning application. There have been multiple examples of mineral extraction sites in Norfolk, where similar issues regarding PROWs have been successfully addressed." Again, the absence of an intention to consider the recreational value of the sites hides behind a discussion of possible footpath retention, playing a dubious game by ignoring the almost total loss of recreational value, and of elevation from up to 72 feet ASL to close to sea level. This is deliberate misinformation.

The lack of concern for the public in this process in this first public consultation generated several comments. One such relates, "As a resident of Marham living in close proximity to this planned development I, like most other residents, was totally unaware or advised of such a scheme until a neighbour informed me of it a few days ago. Apparently only 10 letters were sent out to properties closest to the site. It now also appears that this plan has been discussed by the county council for over three years. The consultation period for this development ends in the next few days giving the residents of Marham and Shouldham insufficient time to review and comment on such a scheme. Considering the size and nature of this planned development this is totally unacceptable and unprofessional. Why have we not been made aware of this plan earlier?" This is answered by, "The Single Issue Silica Sand Review process was carried out from 2014-2016 and was subject to multiple rounds of public consultation and an Examination in Public by an independent Planning Inspector. A number of Parish Councils engaged in the review process; Marham and Shouldham Parish Councils were informed. The Silica Sand Review was a separate local plan process to the current Minerals and Waste Local Plan Review. There is no mention here of any intention to ensure that the local population directly affected, and whose property values may suffer, be informed fully and appropriately in good time

Again, "I would also like to point out that the process has not adhered to the principals laid out in Norfolk County Council's own 'Statement of Community Involvement'. Residents were completely unaware of these plans, they were not notified of the consultation and had only a few days to prepare a response ahead of the deadline." This generates, "All parish councils in Norfolk and all addresses within 250m of the proposed site boundary were informed of the Initial Consultation. A distance of 250 metres was used because this represents a distance at which amenity impacts (such as noise and dust) from mineral extraction could be mitigated to acceptable levels with the minimum of controls. The background to this is revealed by another public comment (recorded above) in this archive, which claimed that the addresses within 250m

of the site boundary included only 10 addresses, including landowners, so that the residents of Shouldham, Marham, Wormegay, and Pentney villages remained uninformed. Noise and dust were the sole chosen arbiters, not loss of environment, land structure, and the manifest loss of regional recreational opportunities. No countryside society provided an opinion in this first consultation, and presumably weren't asked for one.

On the dust issue, Norfolk County Council claims that evidence of public bystander damage from downwind silica dust is not reported, which is a false statement, medically. There is increasing concern in the literature, particularly in children, the elderly, the infirm, and the immunosuppressed. States are regulating this issue in the USA. The Council should be properly aware when making medical statements.

I have been unable to find evidence of a valid systematic assessment of the public recreational interests within the formal AOS E and SIL 02 processes.. There has also apparently been a clear failure to properly inform both the local and the regional recreational users of the implications of the proposals.

5. Loss of my Communication to Minerals and Waste, end of March 2020?

Following two episodes of lost communications with your Department in 2018, I always delivered documentary communications by hand. In this case, I had to rely on a signed-for package through the Royal Mail. A separate package including the same data was sent contemporaneously to the Legal Orders and Register's Team. This was also apparently lost for a while, but I was then assured they were then found (It is concerning that in your letter, you refer to checking with LOR!). The submission to Minerals and Waste contained 5 of the 7 DMMO applications submitted to LOR. Can I ask you to have the LOR version copied for the use of Minerals and Waste? The 'lost' Minerals and Waste submission contained EH 034, EH 040, EH 041, EH 042, and EH 045 DMMO files. It would take me several days work to re-prepare the package.

Can you please advise me whether LOR are in possession of the March DMMO submissions? In addition to the DMMO mentioned, their package should also contain EH 043 and EH 044.

There appears to have been a failure of the document security processes at N.C.C. that may need review.

Conclusions:

1. The General Policies adopted for the Silica Sand Review afford no evaluation of the public recreational land use over the proposed sites. In the context that much of involved land has particularly extensive public utility, I suggest that a full review of the public interest is required by law and by ethical norms.

2. The deliberate avoidance of the question of unrecognised and under-registered public rights of way across the proposed sites is probably unlawful. The attempt to disregard the PROW data when provided to Minerals and Waste appears to be disingenuous. The suggestion to hide behind a 15-20-year delay in a different statutory process under Departmental control is unusual.

3. I propose that a comprehensive and urgent evaluation of both issues is required to bring the public interest in these sites into proper focus, as appropriate for a statutory public inquiry.

4. I fully understand that there are a number of interests here, but the public volunteers, who provide gratis much of the data investigation on historical land and highway issues, do not deserve to be treated in a high-handed manner. This needs to remain a fact-based relationship.

Yours Sincerely,

L. David Ormerod

PROW volunteer

6B. Avoidance of Public Accountability and Inaccuracy of MPA Responses to the Consultation Submissions:

The elicited contributions from the two rounds of “consultee” contributions and from the two rounds of public “commentaries” are reproduced in a variable, abbreviated format in the May 2022 document, the NMWLP Review Statement of Consultation. Given the selective nature of the issues reported and the importance of public accountability, it is surprising how often the “public commentaries” are disregarded or misrepresented in the attached MHA response. The odd infelicity is of little significance, but this occurs on an unacceptable number of occasions. It is regrettable that such instances have not been edited from the document as it calls into question whether this reflects internal agendas?

It is difficult to be certain of the implications, particularly as the public contributions, in particular, are presented in a manner which is particularly difficult to interpret. Action items are usually presented as brief, aggregate comments from which it can often be observed that important critique is omitted. Several specific aspects are discussed in greater detail elsewhere. Here, a brief listing is provided that is limited to discussions of minerals process and of individual putative site considerations. The principal source (as per MPA) of the action item(s) is stated, with headline subject and page number given. Elsewhere, it is shown that public comments are given far less weight than those of ‘official’ consultees, and there is little MPA response that can be shown to be directly associated with public submissions. The list presented is not comprehensive as there are undoubtedly missing examples, on a random basis.

Page 44. Natural England request that sites involving agri-environmental schemes consult Natural England early on. The MPA replies, No Action Required, as it does not affect them – misconstrued.

Page 47. Historic England request formal Heritage Impact Assessment on mineral sites under consideration. The MHA did not explain why a “proportionate level of assessment” had been preferred, and what this meant.

Page 47. Historic England: Comments on policy MP3 - overlooked.

Page 47. Historic England: Comments on the lack of representation for non-designated heritage assets, and regarding the removal of areas unsuitable for extraction from the safeguarded map. These are ignored as the potential mineral extraction sites are reported to be removed from consideration. The two issues are not connected with the site withdrawal.

Page 48. Historic England support improvement of presentation by the use of bullet points. The MPA report that bullet points are replaced with lower case letters. These remain rare in the cumulative document.

Page 49. CATTs: “*NCC M&WLP ‘Vision’ and policies WP1 and WP2, Objectives WS0.2.4.6 and MSO 2.3.8 and 1 (are) not sound because (they) make no mention or plan for the recycling of glass before extracting raw materials*”. The MPA answer fails to answer the questions.

Page 50. Individuals: “This plan is not compliant with DEFRA’s 25-year Plan, with BEIS Clean Growth Strategy, or NPPG refs 27-012, 013, 017, and 045- 201403, or NPPF guidance to look to recycle before extraction of raw materials.” No comment was offered by the MPA.

Page 50. Individuals: “NCC is failing to recycle before extracting raw materials and therefore the plan is not sound and NCC fails their own sustainability objectives SA1, SA3, SA4, SA5, SA6, SA8, SA9, SA11 and SA13 on page 9 of the Sustainability Appraisal Report – Part A - Scoping (Oct 2015) and pages 15-16 of Part B (Jun 2019).” No comment was offered by the MPA.

Page 51. Individuals x2: In total, 13 bullet points are recorded from two submissions. Statements are reported - without the supporting evidence that had been provided. None of the 13 are answered, amongst the circumlocutions. Among the latter was a statement that the consultation process exceeded the requirements of the Norfolk Statement of Community Involvement. This is challenged elsewhere, but the failure even to mention the extensive long-term public utility of Shouldham Warren in any of the formidable collection of study documents over the period 2010 – May 2022 is a failure to respond to the interests of the West Norfolk public. This implies a major infringement of this informing document.

Page 52. The MPA: The MPA claim to “set out full (Consultation) Feedback Reports for each (Options cycle) stage.” This was untrue. Only a flimsy and unaccountable version has been offered for the Preferred Options stage. This is another major infraction of the process set out in the Statement of Community Involvement. In addition, the latter document was delayed for three years despite the hollowness of the MPA response, presenting the MPA response to the public concerns, without public notification, and at the last possible moment after a 12-year process.

Page 52. “The MPA state, “*...an appropriate method to signpost consultations is to supply parish councils... with the details of consultations, so that they can cascade information to parishioners in the way that they consider most suitable.*” This expectation was an abject failure, and still NCC insist that this methodology is retained in the Statement of Community Involvement. It does remain the NCC and MPA responsibility to fully inform the public

(NPPF), not a parish clerk unversed in matters of major regional planning. The MPA accepted responsibility of informing only those residents living within 250m of a site boundary, leaving the vast majority of public interested parties uninformed. Is this a casual error or a deliberate attempt to disengage from most of the public?

Page 57. When talking of biodiversity (as well as ecological or arbocultural) net gains as the consequence of a policy decision, there has to be a baseline against which to judge, with hopefully the original and the consequent measurements undertaken with the same methodology. It does not appear that such assessments in the Plan are properly grounded.

Page 58. CATTs. None of the several points made regarding the regulatory status around glass recycling are answered.

Page 59. Two more contributions from CATTs are again not answered. The replies may basically be sound in their own right, but are designed to be evasive.

Page 64. Norfolk CPRE are concerned that sustainability could be used as an argument to allocate otherwise unsuitable sites. This is just not answered.

Page 67. Broads Authority, and others. A suggestion is made to reference the Institute of Lighting Guidance Notes for the Reduction of Obtrusive Lights, but the answers contain no acknowledgement.

Page 70. The Environmental Agency advises that underwater abstraction licensing legislation in which dewatering water would normally be returned to the same aquifer within "*a short time period*." THE NMWLP still talks of a "timely" period, which is not the same. They go on to discuss the spatial set asides from various water bodies. There was no acknowledgement and it is not included in the NMWLP, 2022.

Page 72. Broads Authority: The MPA acknowledges protection for important outdoor recreation sites, but have perennially failed to recognise that Shouldham Warren had that status.

Page 114. Mineral Products Association: In reply, the MPA makes the statement, "**The NPPF makes a specific link between silica sand supply and the production of the plant that it is supplying.**" I cannot find specific authority for this statement in the NPPF. The MHA may be relying on paragraph 11(a), when it states, "**all plans should promote a sustainable level of development that seeks to meet the development needs of their area.**" The more likely authority is paragraph 214, which includes, "*Minerals planning authorities should plan for a steady and adequate supply of industrial minerals.*" I have not found a specific statement regarding the local silica sand processing plant in either the NMWLP or in its Minerals Guidance document. This statement occurs many times in the Plan documents. If an original authority exists, it should be identified, but it is not the NPPF.

Page 121. Norfolk Wildlife Trust made the point that County Wildlife Sites should not incorporate mineral extraction sites. The MPA states that as County Wildlife Sites are a county and not a national entity that they are not immune from minerals mining. I have not seen any rule-making that supported this differentiation. County Wildlife sites are often small and therefore particularly liable to disruption from mining activities.

Page 122. The Borough of Kings Lynn and West Norfolk quotes the N.C.C. Environment policy to support the withdrawal of the word, "ancient" that was used to qualify woodland protection. They suggest this change owing to important climatic considerations. We have seen elsewhere that the N.C.C. cabinet had declared this same rule change, but which is not included in the NMWLP, 2022, for some reason - with the purpose of systematically enhancing the level of woodland protection.

Page 128. CATTS: "This policy fails to address the other (historical) potential cumulative impacts on the area." The MPA states, "*...taking into account the impact of the proposal in conjunction with other existing, permitted or allocated mineral extraction sites.*" This entirely contradicts NPPG Minerals Guidance (October 2014), paragraph 214(c). This states, in reference to NPPF paragraph 17, "*some parts of a mineral planning authority area may have been subjected to successive mineral development over a number of years. Mineral Planning Authorities should include appropriate policies in their minerals local plan, where appropriate, to ensure that the cumulative impact of a proposed mineral development on the community and the environment will be acceptable. The cumulative impact of mineral development is also capable of being a material consideration when determining individual planning applications.*" The MPA policy in this regard seems unsound and not legally compliant.

Page 131. CATTS: In a discussion of the restoration and after care of old mineral mining sites, there is an obligation to obtain planning application for certain restorations. In a matter with potential public interest, it is germane to note that the district planning procedures have no obligation to inform the interested public of planning issues, in the absence of a Strategic Environmental Assessment request.

Page 132. CATTS: The MPA gives a misleading depiction of the Bawsey Lakes, a huge area of post-silica sand mining blight in Bawsey, incorporating 8-10 residual lakes. It is nominally a County Park, yet large areas are fenced off for heavy metal contamination, sinking sands, severe pollution, dangerous underwater obstructions and there are large expanses of unremediated acid sand.

Page 209. Norfolk MPA: AOS E was cancelled as an AOS and three reasons were given: (i) MOD concerns over increased bird-strike risk at RAF Marham; (ii) the severity of heritage risks referent to Pentney Priory and the Wormegay assets; and (iii) Shouldham Warren being a public open space forming significant part of the higher ground. It is not clear whether the three factors can be relied upon alone. We have seen that for the entire 12-year process, **the MPA has refused to consider Shouldham Warren as the critically important public recreational area that it has long been.** This can only be purposive – a deliberate pretence. As we have seen above, **public recreational areas are protected sites,** and so it is apparently important for the MPA to avoid this recognition. Does the MPA have an alternative explanation for their absence of a defence of Shouldham Warren over a 12-year period? The issue is very likely to be "the higher ground" which would assure, if significant silica sand deposits do exist on Shouldham Warren, that they could be mined without creating a water course and increasing bird-strike risk for RAF Marham.. The unique public recreational land-use interests at Shouldham Warren have been established over 2 to 3 generations and are of **crucial public value because of the widespread loss of landforms over several hundred years of sand extraction in West Norfolk.** It remains very important that **the priority of the public recreational land-use of Shouldham Warren be finally recognized by the MPA and by N.C.C.,** as otherwise it can be expected to be a target of specific applications under the proposed "criteria-based policy" - with all matters sent directly into the district planning procedures, where public issues likely have reduced standing.

Page 210. NCC Natural Environment team, and others: The abandonment of AOS E is used as an excuse to avoid consideration of the environmental and climatic regulatory implications of, "*this "large block of woodland within a largely arable landscape that forms a connecting feature with the woodland (that is) centred on West Bilney Wood, to the NE."*

Page 210. CATTS and others: In consideration of a statement that parts of the Forestry Commission Plan for Shouldham Warren and West Bilney Woods, 2016-26, were being inhibited by conditions in the NMWLP. May 2022, this is answered by a reservation that Forestry England could comment if they wished. However, Forestry England as a non-ministerial branch of central government is not free to contradict the planning of other ministries, and particularly DEFRA (the parent ministry), and has formal duties to cooperate.

Page 210. CATTS and others: Concerns over River Nar Core River Valley protection garners the statement that AOS E does not include any land within the Core River Valley designation. However, the map on page 99 of NMW Development Framework, Revised Policies Map document, December 2017 suggests otherwise. If I understand it correctly (there is multiple overlapping hatching), Shouldham Warren is shown within the Nar Core River Valley. The north part of Shouldham Warren also drains into the River Nar. Core river valleys are strongly protected landforms.

Page 213. Borough of Kings Lynn and West Norfolk: The statement, "*the site has the potential to cause emissions of PM10 and PM 2.5 which can effect the safety and health of local residents*" is just ignored. Elsewhere, the MPA place all their eggs in one basket, by stating that there are no known reports of silicosis from silica sand mining amongst local populations (e.g. **page 215/6**). Silicosis is an industrial disease from regular exposure to silica dust in several industries such as hard rock mining. Silicosis is a fibrotic lung disease primarily limited to those situations. The harm caused by fine particulate material, however, is continuing to emerge, especially in road traffic pollution. There has been considerable recent interest in the increasing reports of health damage associated with the burgeoning proliferation of new sand mines in the USA to provide shale oil fracking sand. Downwind sites and the heavy dispersion on hot, windy days have been found to be important. Exposure is more likely as a periodic event. Residences, hospitals, schools, and residential care homes are likely the most sensitive receptors. A trained ecologist is best placed to identify the risks to flora and fauna. Good practice and site-specific mitigation with good site design can generally control the risks (IAOM Guidance on the Assessment of Mineral Dust Impacts for Planning, May 2016).

Silicosis is not the issue here, but acute asthma, bronchitis, the exacerbation of chronic lung disease, reduced pulmonary function, cancer, and particle dissemination with cardiac and renal disease are. The young immature lung, adults with chronic lung disease from other causes, and the immunosuppressed are vulnerable from exposure to small air-carried particles. These would not show up within silicosis data. The MPA may wish to update its concepts on micro-particulate-induced disease. This was previously drawn to the attention of N.C.C, without response, and without reproduction in the record.

Page 215. Historic England and others: It was mentioned that an historic bridge near the pumping station at Wormegay and Mow Fen, built by the Canadians in WWII, and its natural landscape, are non-registered historical entities of importance. No response was forthcoming.

Page 216. Norfolk Ramblers Association and others: The MPA provide an answer to the question of tree preservation on Shouldham Warren. This has been a major concern for many, but did not appear in the bulleted action items. In several places in the NMWLP record, an argument that the scheduled coupe felling and subsequent replanting within a managed Forestry Commission property are equivalent to the massive destruction of forestry afforded by perhaps a 20-year or longer silica sand mine over perhaps 20-40 hectares, and with reduction to a less viable future in many cases, even with site restitution. There are some facts that are better left to themselves without spurious comparisons.

Page 216. Norfolk Ramblers Association and others: The only discussion of public rights of way on AOS E is the statement, "*need to protect Public Rights of Way (PROW)*." This hides an unlawful attempt by the MPA to avoid extensive data that I supplied directly to them to bring to their attention that there were 10 unregistered or under-registered PROW on the AOS E site that had significant historical and cartographic evidence to support their public utility. In English Common law, once a way has been recognized as a public way, the public rights remain *ad infinitum* unless stopped-off by legal process, no matter whether the highway is still in public usage or not. The MHA refused to accept the evidence which they are not entitled to reject, and also failed to place a map of the proposed routes with an explanation into the respective Plan file. Most of the highways were on Shouldham Warren. The county authorities have a statutory obligation to keep the Definitive Map continuously up to date, and this can never be more important than when a destructive Local Plan is proposed. This action too was unlawful. The brevity of the MPA statement is designed to be evasive as significantly more PROW would be an added complication in the apparent long-term county prosecution of the AOS E area for silica sand mining.

Page 219. Rt. Hon Elizabeth Truss, MP and others: Stated that, "*the government does not set out how much silica sand that the country needs*," with its regional implications. Sibelco are allegedly "*taking advantage of local area/apathy here*." It would help to view the original submission, but in the apparent absence of a specific regulation (see above) that obligates the County to supply the full silica sand requirements of Sibelco, it was considered that Sibelco had been taking advantage and had persuaded the MPA to undertake this task. The statements were just not answered. In return, there appears (on the face of it) to have been little evidence of collaboration between the MPA and Sibelco, although the NPPF stresses the importance of early cooperative relationships between the primary parties.

Page 220. Shouldham PC and others: The impacts of silica sand extraction on woodland in Shouldham Warren and its potential implications for climate change had been submitted. The MHA failed to respond to the questioning. Only the replanting of trees in restoration was mentioned. There was also significant comment on other issues. Answering the questions asked seems to take a low priority.

Pages 221-2. Marham Parish Council and others; and NCC 'Together for Norfolk: an Ambitious Plan for Our County, 2019-25': On conflicts between the NMWLP and the District Local Plan housing allocation and the Borough's open space and environmental policies⁷ over Shouldham Warren, the MPA generates an initial statement, "*in principle, there is no reason why a mineral extraction area could not operate without unacceptable adverse impacts at the distances between the closest parts of AOS E and Marham*." This might possibly be true, although it ignored several fundamental issues (as we have seen) and was a gratuitous comment. A round-the-houses defence of the NMWLA process follows, claiming that the "*criteria-based policy*" is novel, when it appears not to contribute anything at all that is not in the original NPPF-based Local Plan. However, it does markedly weaken the democratic structure, and provides no model for the future. It further states that, "*it would be a matter for any future planning application to consider the potential for adverse impacts and suggest suitable mitigation measures to address these*." The results of submitting such a heavy direct workload onto the district planning process is not evaluated. There has been no attempt at a comparative analysis or trial of this process or determination of its inherent problems. One potentially avoidable issue is the reservation of important remedy-requiring factors to the planning application process, and so true analysis is frequently delayed to the last historical

moment, risking the adoption of bad policy through a simplified mechanism. There is the suspicion that the general failure to establish potential silica sand sites over the last decade is an organizational issue and not necessarily a matter of process - given the legal constraints and necessity to adopt high levels of mitigation. An additional factor is the delay in considering crucial operational issues until the planning process, thereby reducing many of the consultations to theoretical discussions without a view of the proposed specific plan details. Finally, the public has no legal right to be informed of most planning application procedures.

Page 223. MPA: The decision to abandon AOS E, I & J as *"too fragmentary to form an appropriately sized area within which a potentially viable silica sand extraction site"* is not explained anywhere in the cumulative files. What is meant by *"too fragmentary,"* and could this have been foreseen? This decision is opaque and it is not obvious why any of the three sites have been abandoned in a MPA-led process.

Page 225. Highway Authority: Regarding proposed transport of silica sand from three potential sites in the south of Kings Lynn, with routes via the Hardwicke Junction. The Highway Authority authorized (or suggested) phased HGV so that no more than one silica site at any one time was transporting mineral. There was no comment from the MPA.

Page 226. West Norfolk Riding School for the Disabled Association: The proposed AOS F was *"likely to disrupt our charity to provide sporting activity to disabled people."* No comment was forthcoming. The site was abandoned, as discussed.

Page 234. Wormegay PC and others: The MPA states, *"it is unlikely that a Minerals Plan would be found sound at Examination if it suggested that the mineral could be sourced internationally or nationally."* This statement conflicts with NPPF, paragraph 214(a), *"Minerals planning authorities should plan for a steady and adequate supply of industrial minerals by (a) co-operating with neighbouring and more distant authorities to ensure adequate provision of industrial minerals to support their likely use in industrial and manufacturing processes."*

Page 251. The Labour Party and others: There is a discussion about the landscape consequences of 160 years of silica sand extraction at Leziate, although it is not admitted that very extensive areas of the old mining sites are not rehabilitated. The sites were sold by Sibelco UK in only 2015 apparently leaving the new private owner to *"carry out the restoration of the site."* It is difficult to conceive that such extensive blight can be managed without either or both of mineral industry and public finance, given the considerable regional landscape scarring. This is not answered. The problem of antisocial behaviour is the lack of significant oversight and investment (and adequate fencing) in Bawsey Lakes, just 2 miles from Kings Lynn.

Page 256. The MPA state that the NPPG and footnote 68 of the NPPF underpin determination of the silica sand requirement, but footnote 68 of the current NPPF(2021) refers to non-designated heritage assets of archaeological interest.

Page 257. Individuals: The MPA states that *"a legal framework (the planning system) exists to consider these rights (Article 2, Article 8 and Protocol 1 of the European Convention on Human Rights) against the needs of society as a whole. ...Human rights legislation is considered during the planning application decision making process."* I may be wrong, but I cannot recollect such human rights being discussed anywhere in the cumulative Local Plan library. Is this lip service?

Page 258. Individuals: The N.C.C. document, An Ambitious Plan for Our County 2019-2025, is quoted, *"...clear ambition to be a place where we put people first where everyone works together to create a better place to live. A place of opportunity: where we can fulfill our*

potential and lead productive healthy and independent lives." The context from the original "consultation" is not given, and it is not responded to. However, how is this goal consistent with the 12-year actions of the surveying authority in suppressing recognition of the considerable public recreational land-use at Shouldham Warren right up to 2022, and its prior claim on this unique landform in rural West Norfolk?

Page 259. Sibelco UK: The MPA states "*criteria-based policy MPSS1 will be used to determine planning applications that come forward on unallocated sites for silica sand extraction.*" This is quoted often in the "consultation" answers. It implies that the NPPF-based procedures that are currently sanctioned are less of a criteria-based policy than MPSS1, but this is not the case. The new, simplified version has far less independent oversight and is certainly less subject to public consultation - for reasons of a lack of public standing in the district planning procedures. There is also no statutory obligation to even inform the public or many other interested parties of a mineral planning application proceeding at this level.

Page 260. Carter Concrete Ltd: In MIN 69, it was proposed to excavate part of an existing woodland. The problem is put succinctly by the MPA, "*It is not possible at the Local Plan stage to provide detail on how much woodland could be removed.*" Quite. All consulted parties are left in limbo until this information is supplied to the final planning application stage, in a controlled venue with much less opportunity to influence. This is shared with several areas of concern, including environmental and ecological reviews, archaeological and historic landscape reviews, hydrogeological and hydrological reviews, and the whole problem of mitigation and restitution, etc. With good will, many of these factors could be settled out in the open, in support of equity and accountability, before an application to the district planning procedures.

Page 262. Friends of St Andrews School Trust: The problems presented are as to whether there are unacceptable impacts on a School for Autistic Children. The school is on the opposite side of the A148 highway and is obscured from the proposed mining site by an existing screen of trees. There was particular concern as to additional noise levels. The autism spectrum does include individuals with sensory hypersensitivity. The MPA states, "*The noise of mineral extraction operations are not expected to increase the existing noise levels arising from the traffic on the A148. As a proposed extension to an existing site, the number of vehicle movements is expected to remain the same, but to continue for more years.*" The reasoning behind this conclusion, and whether there has been any acoustical testing, is not stated. The hours and schedules of operation, the distance from the extraction site to the school, and as to whether acoustical mitigation practices are in operation at the original site, are also important. It is not stated whether the school is residential, or whether clinical noise-related issues have occurred.

Page 265/6. N.C.C Natural Environment Team: It is not clear from the abbreviated representation as to which company is being referred to, unless possibly it is to "quarry operations." The MPA states, "*...the planning system is not in place to protect private business interests.*" This is disturbing as the economy is naturally to be protected where feasible. However, without context, this just looks very awkward, if not suspicious.

Page 269. Individuals: The sand and gravel allocation MIN 115 is at Lord Anson's Wood near North Walsham, a private, coniferous plantation. It has been allocated (NMWLP 2022, p. 166) without any consideration of climatic change implications, despite the recent important national and county tree planting initiatives. The arbocultural implications for climate change were not part of the SA/SAE assessments that underscored the choice of sites, utilising the

March 2016 sustainability appraisals and the strategic environmental assessments. The reasons for not considering these relatively new objectives is unexplained.

Page 276. Haddiscoe PC: A parish-owned property used as a recreation ground for children and dog walkers was not mentioned in the MIN 25 documentation.. The abbreviated record reported no MPA response.

Page 278. Haddiscoe PC: It is not stated whether the MPA has taken into consideration that the proposed housing development on the edge of the village is within 100m of the proposed sand and gravel extraction area. Are there potential impact sites on this side of the village that might be subject to both developments simultaneously?

Page 288. CATTs: With regard to the Sustainability Scoping Report, MPA state, *“the NM&WLP contains criteria-based policies which would be used to determine planning applications for waste management facilities including glass recycling. In terms of silica sand, National Planning Policy Guidance states that the **required stock** of permitted reserves for each silica sand site is based on the average of the previous 10 year sales; it does not take into account any other supply options (such as recycled materials).”* Actually, the Guidance is for mineral operators (and not for MPA) and does not mention mineral recycling anywhere in the large document. *“Required stock”* is a notional reserve and not an extraction goal. Moreover, paragraph 214(b) under section 17, Facilitating the Sustainable Use of Minerals, in the National Planning Policy Framework, 2012, says the following. *“Planning policies should: (b) so far as practicable, take account of the contribution that substitute or secondary and recycled materials and minerals would make to the supply of materials, before considering extraction of primary materials, whilst aiming to source minerals supplies indigenously.”*

7. Please set out the modification(s) you consider necessary to make the Local Plan legally compliant and sound, in respect of any legal compliance or soundness matters you have identified at 5 above. (Please note that non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why each modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

(Continue on a separate sheet if necessary)

Please note your representation should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested change. There will not normally be a subsequent opportunity to make further representations based on the original representation at publication stage.

After this stage, further submissions will only be at the request of the inspector, based on the matters and issues he/she identifies for examination.

6B. Public Accountability

1. These observations have been mainly relevant to the Single-issue Silica Sand Site Selection Process, but there is also evidence of both inattention and of group think in the MPA responses to both consultations and commentaries.
2. It is extraordinary to observe a 12-year, major Local Plan, and in its silica sand mining programme in particular, **where an established regional pattern of public recreational land use - in Shouldham Warren - is intentionally disregarded**, for (presumably) internal departmental reasons.
3. A few words on public rights of way. The MPA has not understood that it is the revealed historical nature of the way that determines its status under law. Once a public way has been acknowledged, the public rights of way persist in the absence of a legal modification, and even when privatised and no longer in use. It is the County responsibility to keep the Definitive Map continuously updated. **The refusal of the MPA to accept this data and acknowledge its existence on the programme website was improper.** To attempt to game the system and assure that **they would not consider the issues** before the mine might have been in operation for many years **was irresponsible and unacceptable.** The facts were reported to the Chief Executive, but there was no acknowledgement of the implications for Shouldham Warren planning in the Plan documents; the issue was suppressed.
4. **The extensive public recreational land-use preceded the silica sand safeguarding map by 2-3 generations, and indeed Shouldham Warren and West Bilney Woods were not included on the map. Yet, the MPA continued to support the introduction of sand mining at Shouldham Warren,** presumably as it could potentially be compatible with the RAF Marham bird-strike risk aversion. When provided with an opportunity to re-establish public accountability, the Chief Executive failed in his duty. The NMWLP 2022 still prefers to characterise the Shouldham Warren issue as one of open access (and one only recently acknowledged) and not primarily one of a public right to recreation and a historical public utility. The massive public reaction appeared to be a complete surprise to N.C.C. Far too many MPA officer responses to the consultations and commentaries have been inaccurate, opaque, casual, just plain wrong, or have avoided an answer. It is not difficult to answer fully and appropriately, but internal considerations appear to have got in the way.
5. It does not appear that there is an established rule-based environment at the MPA when we see some of the actions reviewed in this section. **Are there effective SOPs in place** to govern decision-making? In such a complex regulatory environment, there probably should be in place so that consistent, lawful decisions continue to be made.
6. To undo the unnecessary assault on regional recreational interests in the attempts by Norfolk MPA to incorporate Shouldham Warren (and West Bilney Wood) into AOS when neither was on the safeguarding map, and then to attempt to game public "commentaries" that mentioned the extent and variety of public recreational use requires N.C.C. to recognise that **major public recreational centres are protected from minerals development by law.** The huge number of "commentaries" received by the MPA reflected also the **totally inadequate**

public discourse that had been undertaken. These activities had been sanctioned in a poorly conceived section of the Norfolk Statement of Community Involvement, of which this Local Plan process was its first time in the sun. If the SCI is not improved, these events or something like them will be fated to return in the future. **The SCI is currently under review and needs to integrate appropriate changes.** Another contentious issue was the diffident consultation offered the general public, and with “commentaries” rather than a true “consultation” as offered to all other stakeholders. **Village/town meetings are needed.** Other instances have been mentioned in these documents. The discounted treatment of the public’s views continued throughout the long process.

7. These data support the notion that, for a variety of reasons, the MPA silica sand extractive site-selection process has been unsuccessful at maintaining sufficient reserves. NPPF explains the task of identifying accessible sites as a cooperative process with minerals firms, but for Norfolk silica sand developments, there is little evidence of this publicly. Perhaps the Rt. Hon. Elizabeth Truss MP has a correct analysis and Sibelko UK have not been pulling their weight. The company, however, has certainly been investigating widely over the last 18 months. Perhaps there have been strategic mistakes. Dependency on AOS as large as 1,014 hectares in size do appear, while having the attraction of scale, to founder on unmitigatable issues when promulgated in the centre of a river valley characterised by numerous medieval monasteries, and close to a major military airbase.
8. The water-body bird-strike issue is presented as an immovable object, in spite of the fact that both of the recently successful sites, SIL 01 and MIN 40, lie within this umbrella. Instead of looking for improvements and a change of tack, the MPA has decided to simplify its task and to refer all applications directly into the district planning procedures. **A more focused policy, based upon going the extra distance and identifying potential mineral sites, is recommended by the NPPF.** There may indeed be other reasons why the proposed AOS sites have not been adopted, although there is no such explanation given. Instead, the MPA relies on an obscure rule intended for mineral areas inside extensive AONB, as decision-making is usually secondary to the landscape designation, that, only then, is the MPA permitted to allow mineral applications directly into planning inspection. I doubt most sincerely that the large safeguarded area for silica sand mining falls into this criterion, partly because it is a widely spread area. The public representation over the 12-year advent of this Local Plan has demonstrably been poor and sub-standard. What is your public supposed to do when they would **likely have no standing in the planning application process, and anyway there would be no statutory obligation to even inform the public that the planning application meeting was to take place?**
9. **I cannot support the proposed shredding of the NPPF criteria-led process and see too many demerits of the voidance of foundational Local Plan principles and the referral directly to the district planning procedures, with untested overall consequences, and lessening yet further the opportunities for representation of the public interests.**
10. In Consultation no. 99001, The Kings Lynn and West Norfolk Borough Council said the following (as quoted in its abstracted form), *“it would be unrealistic to seek to have no areas of search at all, and the Plan could be found unsound.”* The answer ignores the cadence of

this statement. It is suggested, as your district council is too polite to lay out fully, that the current County proposals for the selection of silica sand sites are contrary to basic tenets of the NPPF and I suggest are, in fact, unsound. The silica sand extraction site development programme needs to be redrawn in accordance with the regulations.