

DERBYSHIRE AND DERBY MINERALS LOCAL PLAN

LEGISLATIVE AND POLICY CONTEXT

SUPPORTING PAPER

APRIL 2016

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1 Introduction

- 1.1 There is a range of legislation, guidance and policies at the international, national and local level which the Plan must take into account. In some cases the Plan must be consistent with them and in others, help to deliver their strategies. Others set out requirements that the Plan must meet, in terms of the way it is produced. Additionally, the Plan must be based on a robust and credible, but proportionate evidence base, which is as up to date as practicable. This section sets out the key documents that are applicable when preparing the Minerals Local Plan.

2 The way in which the Plan is prepared

- 2.1 The Plan has been prepared to comply with the legal requirements of the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, the Town and Country Planning (Local Planning) (England) Regulations 2012, the Localism Act 2011 and the Growth and Infrastructure Act 2013. It has also been prepared in general conformity with the National Planning Policy Framework (DCLG, March 2012).

- 2.2 The Local Planning Regulations set out the requirements on planning authorities when producing local plans. Regulation 4 sets out the duty to co-operate bodies (in addition to local planning authorities and County Councils) which are subject to the duty. They also include preparation and publication of the plan and making representations on it (regulations 18 – 20), its submission to the Secretary of State, the examination and consideration of representations and report of the Inspector (regulations 22 – 25) and the adoption of the plan (regulation 26).

- 2.3 When we have finalised the Plan, we will submit the draft Derbyshire and Derby Minerals Local Plan to the Government. It will be examined by a Government Inspector at an independent examination who will assess whether the Plan has been prepared in accordance with the duty to co-

operate, legal and procedural requirements. The Inspector will also assess whether we have prepared a 'sound' plan and take into account any representations made on the Plan at the submission stage. This usually involves a public hearing.

2.4 A 'sound' plan is one that is:

- Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements and promotes sustainable development
- Justified – the plan should be the most appropriate strategy when considered against the reasonable alternatives, based on proportionate evidence;
- Effective – the plan should be deliverable over its period and based on effective joint working on strategic priorities; and
- Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the NPPF.

2.5 If the Plan is found 'sound', it will be adopted by the Councils and form part of the 'development plan' for the Plan area.

Duty to Co-operate, Localism Act 2011

2.6 The Localism Act introduced a 'duty to co-operate'. A local planning authority, or County Council, must 'engage constructively, actively and on an ongoing basis' in the preparation of development plan documents, and other local development documents, when related to a strategic matter. Strategic matters are defined as sustainable development or use of land that has, or would have, a significant impact on at least two planning areas, including (in particular) development in connection with strategic infrastructure that

would have a significant impact on two planning areas and, sustainable development or use of land in a two-tier area if it is a county matter.

- 2.7 The duty to co-operate can also include joint working on activities involved with the preparation of development plan documents and the preparation of joint documents.

3 Overall assessment of the impact of the Plan

- 3.1 The Plan will be informed throughout its preparation by various environmental assessments. This meets the legal requirements of EU Directives, the Planning & Compulsory Purchase Act 2004, and national planning policy. The main assessments cover:

- **Sustainability Appraisal (SA)** – The SA framework will assess the Plan’s Vision & key objectives, spatial strategy, site-specific proposals, and policies against a series of Sustainability Objectives. Where the SA process recommends improvements to the Plan these will be incorporated.
- **Strategic Environmental Assessment (SEA)** – This must be carried out on proposals for certain types of major development. The Plan will follow Government guidance which recommends that SEA be integrated into SA in one combined approach.
- **Habitats Regulations Assessment (HRA)** – Where a Plan or development project could have a significant effect on a Natura 2000 site, it must be the subject of an ‘Appropriate Assessment’.
- **Strategic Flood Risk Assessment (SFRA)** – A ‘Level 1: Strategic Flood Risk Assessment’ is being prepared to inform the Plan’s preparation in relation the potential flood risk issues across the Plan area.

Equality Impact Assessment

- 3.2 The Equality Act 2010¹ introduced the Public Sector Equality Duty which requires local authorities, when developing or implementing policy to have regard to the need to: eliminate discrimination, harassment or victimisation, advance equality of opportunity between people from different groups and foster good relations between people from different groups. In order to meet the duty, local authorities are required to analyse the impact of their policies and practices in respect of equality. An Equality Impact Assessment (EqIA) will be carried out in preparing the Plan.

4 Specific Linkages to Plans and Strategies

4a. International

- 4.1 There are a number of international protocols and conventions that have a bearing on the development plan system. The World Summit on Sustainable Development, Johannesburg (2002) reaffirmed the international commitment to sustainable development.
- 4.2 The Kyoto Protocol is linked to the UN Framework Convention on Climate Change (1997) which set out targets for reducing greenhouse gas emissions. The Convention encouraged countries to stabilise greenhouse gas emissions whereas the Protocol commits them to doing so by setting binding targets. The 2015 UNCCC negotiated the Paris Agreement on the reduction of emissions as part of the method for reducing greenhouse gas.
- 4.3 To implement the Bern Convention on the Conservation of European Wildlife and Natural Habitats, the EU adopted Directives on Conservation of Wild Birds (the Birds Directive) and Conservation of Natural Habitats and of Wild Fauna and Flora (the Habitats Directive). These were implemented in UK law by the Wildlife and Countryside Act 1981. A requirement of the Convention is that countries “must take action to have regard to the conservation of wild flora and fauna in their planning and development policies.”

¹ Equalities Act 2010

4b.European

Directive on the assessment of the effects of certain plans and programmes on the environment 2001/42/EC (Strategic Environmental Assessment Directive)

(See section on the overall assessment of the Plan)

- 4.4 The Directive has as its objective to 'provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development'.
- 4.5 For the Environmental Assessment (it doesn't use the term Strategic Environmental Assessment) the Directive requires a range of information. This includes:
- An outline of the contents of the plan, its main objectives and relationship with other plans;
 - The baseline position with regards to the current state of the environment and its likely evolution without the plan, the environmental characteristics of areas likely to be affected, any relevant environmental problems;
 - Environmental protection objectives and how they've been taken into account;
 - The likely significant effects on the environment;
 - The means envisaged to prevent, reduce and as fully as possible offset any significant effects on the environment of implementing the plan;
 - Outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken;

- A non-technical summary.

Directive on the conservation of natural habitats and of wild fauna and flora 92/43/EEC (Habitats Directive)

- 4.6 The Habitats Directive is concerned primarily with the protection of natural habitats and wildlife. In relation to the planning system, it requires that policies should encourage the management of features of the landscape which are of importance for wildlife. In common with the SEA Directive, it also requires that an assessment be made of any plan likely to have a significant effect on the conservation objectives of a designated site. **(See section on the overall assessment of the Plan)**

Europe 2020: A European strategy for smart, sustainable and inclusive growth

- 4.7 Europe 2020 is a strategy to help Europe come out stronger from the recent economic crisis, turning the EU into “a smart, sustainable and inclusive economy”.
- 4.8 The priorities at the heart of Europe 2020 include sustainable growth, which is defined as promoting a more resource efficient, greener and more competitive economy. To catalyse progress under each priority seven flagship initiatives have been put forward including “Resource efficient Europe”.
- 4.9 The intention of a ‘resource efficient Europe’ is “to help decouple economic growth from the use of resources, support the shift towards a low carbon economy, increase the use of renewable energy sources, modernise our transport sector and promote energy efficiency.”
- 4.10 Targets selected include: reduce greenhouse gas emissions by at least 20% compared to 1990 levels or by 30%, if the conditions are right; increase the share of renewable energy sources in final energy consumption to 20%, and a 20% increase in energy efficiency.

Europe 2050: Roadmap to a Resource Efficient Europe

- 4.11 In 2011, the European Commission unveiled a road map for transforming Europe's economy into a resource efficient one by 2050 including a vision that by this date all resources are sustainably managed, from raw materials to energy, water, air, land and soil. In this scenario, climate change milestones have been reached, while biodiversity and the ecosystem services it underpins have been protected, valued and substantially restored. It envisions competitiveness and growth based on using fewer resources in production and consumption of goods, and creating business and job opportunities from activities such as recycling, product design, materials substitution and eco-engineering.
- 4.12 Governments are invited to shift taxation away from labour towards pollution and resources, and to provide incentives to push consumers towards resource-efficient products. The road map also recommends adapting prices to reflect the real costs of resource use, especially on environment and health. The roadmap is a first step in designing a coherent action framework from which targets and indicators will be developed in order to deliver the vision of a resource efficient Europe. Resource efficiency is a key component of planning for sustainable minerals development.

4c.National

- 4.13 The Plan must be consistent with national planning policies set out in the **National Planning Policy Framework (March 2012)**. The NPPF replaced the majority of the planning policy statements and guidance notes used in the very early stages of the preparation of this plan. The NPPF includes a presumption in favour of sustainable development.
- 4.14 There are three roles to sustainable development; economic, social and environmental. The NPPF lists them as:

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and
- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

4.15 With regards to plan making, it states that “local planning authorities should positively seek opportunities to meet the development needs of their area”; it further requires that the authorities set out strategic priorities for the area in the Local Plan.

4.16 It sets out national policy for minerals planning and provides the parameters within which we must develop the policies and proposals within the Minerals Plan. Whilst preparing our plan we must take the following into account. Below is a summary of its main policy guidance under two broad objectives.

4.17 Sustainable Development of Mineral Resources

- To support economic growth and our quality of life, it is important that there is a sufficient supply of minerals. Since they are a finite resource, it is important to make best use of them to secure their long term conservation.(*NPPF, paragraph 142*)

- Account must be taken initially of the contribution that secondary and recycled materials would make to the supply of materials before considering extraction of primary minerals. *(NPPF, Paragraph 143)*
- Provision must be made for aggregate minerals (crushed rock and sand & gravel) through the preparation of a Local Aggregate Assessment, and taking account of the advice of the Aggregate Working Parties and the National Aggregate Co-ordinating Group. Provision should be through the identification of specific sites, preferred areas and/or areas of search. *(NPPF, paragraph 145)*
- Ensure the maintenance of landbanks of at least 7 years for sand and gravel and at least 10 years for crushed rock. *(NPPF, paragraph 145)*
- Mineral resources of local and national importance should be safeguarded from sterilisation by other non-mineral developments (e.g. housing and industry) to ensure that future generations have sufficient supplies of minerals to meet their needs. The prior extraction of minerals should also be encouraged if it is necessary for non-mineral development to take place in mineral safeguarding areas. *(NPPF, paragraph 143)*

4.18 Ensuring that the Impact of Mineral Extraction on the Built and Natural Environment is minimised.

- Permitted operations should not have unacceptable adverse impacts on the natural and historic environment, human health or aviation safety. The cumulative effect of multiple impacts from one site and/or a number of sites in a locality should be taken into account. *(NPPF, Paragraph 143)*
- As far as is practical, non-energy minerals should be provided from areas outside internationally, nationally and locally designated areas of landscape value and conservation importance. *(NPPF, Paragraph 144)*

- Opportunities for the sustainable transport of goods by modes of transport other than road should be exploited, for example by rail or on inland waterways. (*NPPF, Paragraph 35*)
- Once extraction has ceased, worked land should be reclaimed at the earliest opportunity, taking account of aviation safety, and high standards of restoration and aftercare of mineral sites should take place. (*NPPF, Paragraph 143*)

4.19 The minerals policy set out in the NPPF includes both conventional and unconventional hydrocarbons such as shale gas and coalbed methane.

4.20 Chapter 10 of the National Planning Policy Framework deals with climate change and flooding issues. It sets out how planning, in providing for the new homes, jobs and infrastructure needed by communities, should move us towards sustainable development and, in particular, help shape places with lower carbon emissions and which are more resilient to the impacts of climate change.

Energy Act 2013

4.21 The Act has several objectives, and in relation to hydrocarbons it seeks to make provision for the setting of a decarbonisation target range and duties in relation to it; or in connection with reforms to the electricity market for purposes of encouraging low carbon electricity generation, or ensuring security of supply. It is also about the designation of a strategy and policy statement concerning domestic supplies of gas and electricity. It does not actually prescribe a new strategy or policy at this stage, but instead sets the procedural requirements for doing so. It is likely however that future policy and strategy will reflect the overall objective of the Act to reduce our carbon footprint and in turn this will affect the future demand for minerals, including fossil fuels.

- 4.22 **Section 19 (1A) of the Planning and Compulsory Purchase Act 2004** requires local planning authorities to include in their Local Plans “policies designed to secure that the development and use of land in the local planning authority’s area contribute to the mitigation of, and adaptation to, climate change”. This will be a consideration when a Local Plan is examined.

Growth and Infrastructure Act 2013

- 4.23 Economic growth is at the heart of the Government’s agenda. This Act seeks to promote growth and facilitate the provision of infrastructure through simplifying the planning system. The Plan will need to take these provisions into account.

Planning Practice Guidance notes

Minerals Planning

- 4.24 Minerals safeguarding: The Mineral Planning Authority should consult with relevant interests to define Minerals Safeguarding Areas and Minerals Consultation Areas and set them out on policies map. Clear development management policies for non-minerals development in Minerals Safeguarding Areas should be adopted.
- 4.25 Planning for minerals extraction: Mineral Planning Authorities should plan for the steady and adequate supply of minerals in one or more of following ways (in order of priority): designating specific sites, designating preferred areas, designating areas of search. Designating specific sites provides certainty on when and where development may take place
- 4.26 With regards to planning for a steady and adequate supply of aggregates, there is the Managed Aggregate Supply System. This requires Mineral Planning Authorities which have adequate resources to make an appropriate contribution to national as well as local supply. Mineral Planning Authorities are expected to prepare Local Aggregate Assessments to assess demand for

and supply of aggregates. The aggregate landbank is principally a monitoring tool and is the main basis for the Authority to consider whether to review the local plan

- 4.27 Planning for Hydrocarbon extraction: The guidance provides advice on planning issues associated with the three phases of extraction of hydrocarbons; exploration, testing (appraisal) and production.
- 4.28 Unconventional hydrocarbons are emerging as a form of energy supply and there is a pressing need to establish whether or not there are sufficiently recoverable quantities to facilitate economically viable production.
- 4.29 Mineral Planning Authorities are encouraged to use existing published data to highlight areas where proposals for hydrocarbon extraction may come forward, as well as managing potentially conflicting objectives for land use. Authorities are expected to include Petroleum Licence Areas on proposals maps and criteria-based policies for each of the three phases of extraction. Existing hydrocarbon extraction sites should be identified where appropriate and may include specific locations should the industry wish to promote specific sites. There will normally be no need to create Mineral Safeguarding Areas for hydrocarbon extraction due to the depth of the resource, the ability to utilise directional drilling and the small surface area requirements of well pads.

The Carbon Plan: Delivering our low carbon future

- 4.30 The Carbon Plan, published in December 2011, sets out the Government's strategy for achieving the emissions reductions committed to in the first four carbon budgets on a pathway consistent with meeting the 2050 target. The Climate Change Act established a legally binding target to reduce the UK's greenhouse gas emissions by at least 80% below base year levels by 2050, to be achieved through action at home and abroad.² To drive progress and set the UK on a pathway towards this target, the Act introduced a system of carbon budgets which provide legally binding limits on the amount of

emissions that may be produced in successive five-year periods, beginning in 2008. The first three carbon budgets were set in law in May 2009 and require emissions to be reduced by at least 34% below base year levels in 2020. The fourth carbon budget, covering the period 2023–27, was set in law in June 2011 and requires emissions to be reduced by 50% below 1990 levels.³

Biodiversity 2020: A strategy for England’s Wildlife and ecosystem services

4.31 The mission for the strategy is: *“to halt overall biodiversity loss, support healthy well-functioning ecosystems and establish coherent ecological networks, with more and better places for nature for the benefit of wildlife and people.”*

4.32 In relation to planning and development, the priority action of the strategy is to take a strategic approach to planning for nature within and across local areas to guide development to the best locations, encourage greener design and enable development to enhance natural networks. The protection and improvement of the natural environment will remain a core objective of the planning system.

4d. Regional

Regional Planning Policies

4.33 The Localism Act (2012) includes provision for regional strategies to be revoked. The East Midlands Regional Plan (RSS) was revoked on 12th April 2013. Although no longer part of the development plan, the RSS may be of use in supplementing the evidence base of the Plan where relevant.

Derbyshire and Nottinghamshire Local Enterprise Partnership

4.34 The Derbyshire and Nottinghamshire Local Enterprise Partnership was established in 2011 to promote economic and business performance in the combined geographical counties of Derbyshire and Nottinghamshire. The

LEP has established its vision, challenges, objectives, and strategic priorities to support economic growth. The Plan will need to take these priorities into account and seek to assist in delivering the vision where appropriate.

North Midlands Combined Authority

- 4.35 Derby City & Derbyshire County, together with Nottingham City, Nottinghamshire County and the constituent Borough and District Councils are currently in negotiations with the Government over proposals for strategic planning through a combined authority.

Lowland Derbyshire and Nottinghamshire Local Nature Partnership

- 4.36 The Lowland Derbyshire and Nottinghamshire Local Nature Partnership was established in 2012 to promote the creation and enjoyment by all of a better natural environment. It covers the lowland Derbyshire area of the Plan area and the whole of the geographical county of Nottinghamshire. The LNP has established its vision, and action plan to deliver the vision. The Plan will need to take these priorities into account and seek to assist in delivering the vision where appropriate.

Peak District Local Nature Partnership

- 4.37 The Peak District Local Nature Partnership covers the whole of the Peak District as defined by its landscape and geography. The remaining part of the Plan area outside Lowland Derbyshire lies within the Partnership area. The PDLNP has established its ambition to ‘achieve a thriving and inspiring landscape richer in bio and geodiversity; where a valued and cultural environment, central to decision making, is managed for wildlife, promotes healthier lives and benefits the local economy.’ The Plan will need to take these priorities into account and seek to assist in delivering this ambition where appropriate.

4e. Local Planning Policies

Saved Policies of the Derby and Derbyshire Minerals Local Plan (including Coal Alteration) Adopted 2002 (Policies MP8, 9, 14, 20, 26, 30 and 31 have now expired)

- 4.38 This Plan contains the policies against which planning proposals for mineral development in the Plan area are presently considered. It will be replaced by the new Derby and Derbyshire Minerals Plan but it may contain information relevant to the preparation of a new Plan.

Local Aggregates Assessment

- 4.39 The National Planning Policy Framework requires mineral planning authorities (MPAs) to produce an annual Local Aggregate Assessment, its purpose being to identify the amount of aggregate minerals (crushed rock and sand and gravel) that each MPA will need to provide, based on past production rates and other local considerations. Derbyshire County Council, Derby City Council and the Peak District National Park Authority have undertaken a joint assessment. The LAA will inform the Minerals Local Plan to ensure that it provides for a steady and adequate supply of aggregates over the plan period.

The Derbyshire Transport Plan 2011

- 4.40 The Derbyshire Local Transport Plan sets out a transport vision, goals, challenges to be tackled and a strategy covering the period to 2026. The vision aims to achieve a transport system that is both fair and efficient, promotes healthier lifestyles, safer communities, safeguards and enhances the natural environment and provides better access to jobs and services, whilst also improving choice and accessibility of transport and integrating economic, social and environmental needs.
- 4.41 Key Issues identified in terms of minerals is the need to seek local supplies to reduce the impact of transportation on the environment and to help reduce the carbon footprint of the industry and the need to promote the

sustainable transport of minerals by modes of transport other than road, for example, by rail or on inland waterways.

District, Borough and City Local Plans and LDFs

- 4.42 The Plan must be read in conjunction with the local policy guidance set out in separate Local Plans being prepared by the district/borough/city councils in the Plan area, where these carry weight or have been adopted. In the absence of an up-to-date and relevant Local Plan, the detailed provisions of paragraphs 214, 215, and 216 of the National Planning Policy Framework will apply.
- 4.43 This Plan forms part of the Development Plan covering the eight Derbyshire Districts/ Boroughs/ and City of Derby and its mineral policies should be taken into account when determining non-minerals related development. District, borough and city councils are required to include on their own Adopted Policies Map, any relevant minerals planning matters such as Mineral Safeguarding Areas, safeguarded sites and any mineral site allocations in this Plan.

Sustainable Community Strategies

- 4.44 The Deregulation Act 2015 removed the requirement for local authorities to prepare sustainable community strategies (SCSs), (although they can still, if they wish) and for planning authorities to take them into account during plan preparation. Most of the SCSs previously prepared by Derbyshire's authorities have now become out of date as they have not been replaced, but there are still four in date SCSs covering Chesterfield, North East Derbyshire, Bolsover, Erewash & South Derbyshire.

Chesterfield and North East Derbyshire

*Sustainable Community Strategy for Chesterfield and North East Derbyshire
2009 – 2026*

4.45 There are five Strategic Themes. Within the ‘Sustainable Communities’ Strategic Theme is:

4.46 ‘The 2026 Vision: a high quality and diverse natural and built environment which is compatible with the needs and expectations of our current and future communities’

4.47 “We will work closely with businesses and households so that they can contribute individually and collectively to reduce the local impact on the environment. We support the reduction of pollution affecting our land, air and water and minimise local waste. We will promote recycling, energy efficiency, the adoption of renewable energy sources and champion the adoption of a broad range of energy saving techniques and technologies.”

4.48 Within the Working and Learning Communities Strategic Area is:

‘The 2026 Vision: a successful local economy, supporting the development of sustainable communities’

4.49 The strategy identifies the need to stimulate economic activity to tackle unemployment.

Bolsover

Bolsover Partnership Sustainable Community Strategy: Bolsover District 2006 – 2020, Refreshed 2013 – 2020

4.50 Under “A Better Place to Live” is ‘2020 Vision: Everyone will live in homes that meet the required standard and within communities that are sustainable and safe. Best use will have been made of available land to develop new housing and recycling and the use of renewable energy will be the norm. Everyone will have access to high quality sporting and leisure provision. Everyone will have access to green spaces, and our natural environment will

be nurtured and protected to ensure future generations can enjoy the natural heritage.'

Erewash

Sustainable Community Strategy 2014 – 2024

4.51 The purpose of this strategy is to provide a vision for Erewash and a plan that will lead to a better quality of life for all. A number of priorities are listed including:

- Economic Wellbeing
- Employment and Skills
- Health and Wellbeing
- Safer Communities

South Derbyshire

Fit for the Future: Our Sustainable Community Strategy for South Derbyshire 2009 - 2029

4.52 Under the heading 'Sustainable Development' is "Our vision for the future for sustainable development. Successful existing and new communities which meet the population's needs and aspirations."

4.53 'What we want to see in 2029:

Adequate, appropriate and affordable housing for all in well served communities.

4.54 How we'll get there:

Seek housing growth that is accompanied by the provision of appropriate services and supporting infrastructure.

Address development and economic issues through cross-border working, wherever appropriate.

4.55 High quality development that minimises the impact on the environment.

How we'll get there:

Develop sub regional approaches to tourism related activities.

Take opportunities to implement environmental improvements alongside growth.

Derbyshire County Council – Council Plan

- 4.56 The Council Plan sets out key priorities for 2014 - 2017. It identifies five main pledges – a Derbyshire that works, a healthy Derbyshire, a safer Derbyshire, a Derbyshire that cares and a local Derbyshire. The Plan will need to take these pledges into account and seek to assist in delivering them, where appropriate.

Derby City – Council Plan

- 4.57 The Council Plan is a key document that sets out what key improvements Derby City Council would like to make. The latest Council Plan runs until March 2015.
- 4.58 The Council Plan supports the Derby Plan 2013 – 2015 priorities and focuses on the following areas, Better outcomes for our communities, Improved value for money, More efficient and effective processes & A skilled and motivated workforce.

The Plan will need to take these priorities into account and seek to assist in delivering them, where appropriate.