

Cabinet

17 May 2023



Submission of Minerals and Waste Policies and Allocations Development Plan Document and Revised Statement of Community Involvement

Key Decision REG/02/2023

Report of Corporate Management Team

Amy Harhoff, Corporate Director of Regeneration Economy and Growth

Councillor Elizabeth Scott, Cabinet Portfolio Holder for Economic Regeneration and Partnerships

Electoral division(s) affected:

Countywide

Purpose of the Report

- 1 The purpose of this report is to advise Cabinet on the representations received following the final statutory consultation on the Publication Draft of the Minerals and Waste Policies and Allocations Development Plan Document (M&WDPD) and to seek Cabinet's approval to recommend that Council agree the Publication Draft of the Minerals and Waste Policies and Allocations Development Plan Document for Submission. The Full Council meeting is 21 June 2023.
- 2 It also seeks approval of a revised Statement of Community Involvement (SCI) which sets out how stakeholders are involved in local plan and neighbourhood plan preparation and the determination of planning applications.

Executive Summary

- 3 The County Durham Plan seeks to ensure that County Durham is a successful place to live, work, invest and visit by focussing on supporting and creating vibrant communities. The Plan is a comprehensive document covering all aspects of planning however it only includes high level strategic policies and allocations relating to minerals and waste. There is therefore a need to supplement those

policies with more detailed development management policies and non-strategic site allocations in the M&WDPD.

- 4 The M&WDPD has been prepared in line with the latest guidance in the National Planning Policy Framework (NPPF), National Planning Policy for Waste (NPPW), the Planning Practice Guidance (PPG) and other relevant Government policies.
- 5 The Publication Draft of the Minerals and Waste Policies and Allocations Development Plan Document (M&WDPD) is the final stage in its development. It is informed by consultation with residents, businesses, the minerals and waste industry, key stakeholders and neighbouring authorities at all stages. A total of 65 comments from 20 different respondents were received. More detail is set out in Statement of Consultation, which includes a statement setting out how the public consultation, at the First Draft (2021) and Preferred Options stage (2022), under Regulation 18 (of the Town and Country Planning (Local Planning) (England) Regulations 2012) was addressed and how the representations were reflected in the Plan.
- 6 All representations made at the Publication Draft consultation (Regulation 19) stage have been reviewed and carefully considered and it has been concluded that, subject to a number of minor text and formatting changes which need to be made, there are no matters arising from the representations that call into question the soundness of the Plan or the legality of its preparation that would prevent it being submitted to the Secretary of State for independent examination.
- 7 Subject to Council's approval on 21 June 2023, the Publication Draft Plan will be submitted to the Secretary of State by the end of June 2023 for independent examination. An independent Inspector will be appointed soon after and the timescales from that point will be determined by the Inspector although we anticipate that the Examination in Public (EIP) hearings will be held in the autumn. After examination and following consultation on any modifications proposed by the Inspector, the Council will be asked to adopt the M&WDPD.
- 8 The current version of the Statement of Community Involvement (SCI), which sets out how stakeholders will be involved in local plan and neighbourhood plan preparation and the determination of planning applications, was adopted in 2020. It has now been updated to reflect changes in how consultations are now undertaken including the increased emphasis on online events and the use of social media.

Recommendation

9 Cabinet is asked to recommend Council:

- (a) Consider the representations received during the final statutory consultation on the Publication draft of the Minerals and Waste Policies and Allocations Development Plan Document;
- (b) Authorise formal submission of the of the Minerals and Waste Policies and Allocations Development Plan Document at Appendix 2 and associated submission documentation to the Secretary of State pursuant to Section 20 of the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012; and
- (c) Authorise the Corporate Director of Regeneration Economy and Growth in consultation with the Portfolio Holder for Economic Regeneration to:
 - (i) approve the submission of the documents required to be submitted alongside the M&WDPD to the Secretary of State as required by Section 20 of the Planning and Compulsory Purchase Act 2004 and of The Town and Country Planning (Local Planning) (England) Regulations 2012 for consideration at public examination;
 - (ii) agree statements of common ground with neighbouring authorities and other interested parties in order to demonstrate effective and on-going joint working;
 - (iii) continue discussions with interested parties and suggest to the Inspector any edits and consequential changes necessary following Council approval up to and during the Examination; and
- (d) Authorise the Corporate Director of Regeneration Economy and Growth to ask the Inspector appointed to hold the Examination in Public to recommend modifications to the M&WDPD Publication Draft under Section 20(7C) of the Planning and Compulsory Purchase Act 2004 necessary to satisfy the requirements of Section 20(5b) of the Act and make the document sound.
- (e) Agree the Statement of Consultation at Appendix 3;
- (f) Agree the amendments identified in the 'Schedule of Minor (Additional) Modifications' at Appendix 4; and
- (g) Agree the Waste Technical Paper (Appendix 5) and an updated County Durham Local Aggregate Assessment (Appendix 6).

10 Cabinet is recommended to:

- (a) Adopt the revised Statement of Community Involvement (SCI) at Appendix 8;

Background

- 11 At a meeting on 21 October 2020 the Council adopted the County Durham Plan. The report to Members also noted that there would be a further document, the M&WDPD, which will be prepared to complement the minerals and waste policies of the County Durham Plan and will replace the remaining saved policies of the County Durham Minerals Local Plan (December 2000) and the County Durham Waste Local Plan (April 2005).
- 12 The M&WDPD has been prepared in line with the latest guidance in the National Planning Policy Framework (NPPF), National Planning Policy for Waste (NPPW), the Planning Practice Guidance (PPG) and other relevant Government policies.
- 13 At a meeting of Cabinet on 16 December 2020 a notification letter to specific consultees identified by the regulations and a call for sites document were both agreed for consultation from 15 January to 26 February 2021. The outcome of this consultation was reported to Cabinet on 15 September 2022 where Cabinet agreed a draft M&WDPD for consultation from 24 September 2021 and 5 November 2021.
- 14 Following the consultation on the draft Plan in 2021 and discussions with internal and external stakeholders the content of the Minerals and Waste Policies and Allocations Development Plan Document was revised, and the Publication Draft consulted on from 28 November 2022 to 13 January 2023.

Consultation

- 15 In response to the consultation a total of 65 comments from 20 different respondents were received. The parts of the document receiving most representations included:
 - 10 representations were assigned to the document as a whole. These representations amongst other matters provided clarification that the Environment Agency considered the document sound, that Historic England had considered that the document followed national policy guidance and that they had no further specific comments. A number of adjoining Councils also responded positively;
 - 9 representations were to Policy MW1 (General criteria for considering minerals and waste development) and its supporting text all of which were either supportive, requested minor changes or amendments none of which impact upon the soundness of the

policy. A small number of minor modifications are proposed to address a number of these representations;

- 5 representations to the Policy MW1 Mineral Exploration which included supportive comments from the minerals industry with regard to the approach taken;
- 8 representations were received to the four policies which allocated land for further mineral extraction and waste development; and
- 3 representations were received from the minerals industry regarding the non-allocation of land they had submitted following the Council's call for sites.

16 All representations made have been reviewed and carefully considered and it has been concluded that, subject to some minor text and formatting changes which need to be made, there are no matters arising from the representations that call into question the soundness of the M&WDPD or the legality of its preparation that would prevent it being submitted to the Secretary of State in its current form. Therefore, it is not necessary to carry out any further consultation and any outstanding issues will be resolved at the Examination in Public.

17 More detail is set out in the Statement of Consultation, which includes a statement setting out how Regulations 18 and 19 were addressed and how the representations were reflected in the M&WDPD. A summary of the representations received together with a brief summary is included by officers for information (Appendix 3). On submission, the Council will collate all representations made at the Regulation 19 (Publication Draft) consultation stage.

Content of the Minerals and Waste Policies and Allocations Development Plan Document

18 The Minerals and Waste Policies and Allocations DPD (Appendix 2) includes the following:

- specific policies for a number of economically important minerals, not addressed by the strategic minerals policies of the County Durham Plan but where future planning applications for the 'winning and working of minerals may occur such as Lithium (which is present in Weardale), vein minerals and for conventional and unconventional oil and gas and for major waste management processes such as for inert recovery, inert landfill/landraise and non-hazardous landfill;

- detailed minerals and waste development management policies including a comprehensive criteria based policy for considering minerals and waste development which amongst its provisions seeks to protect human health, the amenity of local communities, the environment of County Durham including its landscape, biodiversity and geodiversity, the County's historic environment, surface water, groundwater and flood risk; best and most versatile agricultural land and County Durham's soil resource and County Durham's ability to meet the challenge of climate change and transition to a low carbon future;
- additional policies that address in detail matters including noise, air quality and dust, vibration from blasting, the transport of minerals and waste (including road to rail transshipment facilities), borrow pits which are small mineral working proposals directly related to a construction project, ancillary mineral related infrastructure such as concreting and asphalt plants, the restoration and after-use of mineral and landfill/landraise sites and a policy detailing the benefits of minerals extraction;
- two site allocations for minerals and waste site which were included within the Draft Plan. These were for Basal Permian Sand and overlying Magnesian Limestone at a northern extension to Crime Rigg Quarry and for Basal Permian Sand by deepening at Thrislington West Quarry. Both of these site allocations are considered necessary to meet the future needs of County Durham and make an appropriate contribution to wider regional needs for mineral supply; and
- two new site allocations for inert waste disposal, these are for inert waste disposal at land within the existing void of Crime Rigg Quarry and for further inert waste disposal at Cold Knuckles Quarry. Both of these site allocations are located at active mineral sites which already accommodate inert waste landfill operations. They are considered necessary to meet the future needs of County Durham for inert waste disposal and will also contribute to the waste capacity gap identified within the County Durham Plan.

Supporting Documents

- 19 Sustainability Appraisal (SA) is a statutory process integrated into the preparation of all aspects and stages of the M&WDPD. The process measures the potential impacts of the Plan on a range of economic, social and environmental considerations, and includes the requirements of Strategic Environmental Assessment legislation. Where appropriate changes have been made to the Plan to incorporate SA

recommendations. Where the recommendations have not been incorporated into the M&WDPD an explanation is provided.

- 20 The Sustainability Appraisal (SA) predicted positive cumulative effects against all social and economic objectives and most environmental objectives. It also predicts that the M&WDPD will have positive, overriding cumulative effects on climate change despite negative effects being predicted against a small number of policies. In this regard, collective measures are considered to outweigh negative effects.
- 21 In order to comply with the requirements of the Habitat Regulations, a Habitat Regulations Assessment (HRA) has been undertaken. The overall conclusion of the Habitats Regulations Assessment Report was that the proposed sites included within the Publication Draft County Durham M&WDPD do not, alone (or in-combination), have any likely significant effects on European Protected Wildlife Sites.
- 22 In addition to these assessments a Waste Technical Paper (Appendix 5) and an updated County Durham Local Aggregate Assessment (Appendix 6) have also been prepared. These are both evidence base documents which will be submitted alongside the draft M&WDPD at Submission and will ensure the Inspector has access to an updated evidence base.

Soundness

- 23 The focus of the recent consultation was on soundness and legal compliance with the statutory procedures that must be followed when preparing the Plan. The Plan will now be subject to formal examination by the Planning Inspectorate. Examination is against four 'tests of soundness' set out in the National Planning Policy Framework (NPPF). A local authority should submit a plan for examination which it considers 'sound' on the basis that it is:
- **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;
 - **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on a proportionate evidence;
 - **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

- **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework.
- 24 Considering carefully the representations received, and following legal advice, it is considered that the M&WDPD is sound and has been prepared in accordance with the Duty to Co-operate and all legal and procedural requirements. It is considered that no significant changes to the M&WDPD are necessary prior to its Submission under Regulation 22 to the Secretary of State for independent examination.
- 25 Following consideration of the consultation comments, a schedule of minor (additional) modifications to the M&WDPD are proposed. These modifications will not alter the meaning or substance of the M&WDPD and are attached at Appendix 4. Notwithstanding this position and in the interest of good practice, it is proposed that officers continue to discuss issues raised during the consultation period with stakeholders in the run up to the Examination, to further minimise their areas of concern. It is proposed that authority is given to the Corporate Director of Regeneration Economy and Growth, in consultation with the Cabinet Portfolio Holder for Economic Regeneration and Partnerships, to continue discussions, prepare and present evidence and suggest to the Inspector any edits and consequential changes necessary to the M&WDPD.
- 26 The Inspector, in examining the M&WDPD and in light of representations made, may conclude that ‘modifications’ are required to make it sound and capable of adoption. Any ‘main modifications’ made in relation to soundness will in almost all cases need to be the subject of further consultation. It is accordingly proposed that Council authorises the Director of Regeneration Economy and Growth to ask the Inspector under section 20(7C) of the Planning and Compulsory Purchase Act 2004 to recommend modifications to the Plan, to ensure that modification, if required, can be made to satisfy the requirements of subsection (5b) and make the document sound.

Timescales and Next Steps

- 27 Subject to Council approval on 21 June 2023, the M&WDPD will be submitted to the Secretary of State by the end of June 2023 for independent examination. An independent Inspector will be appointed soon after and the timescales from that point will be determined by the Inspector although we anticipate that the Examination in Public (EIP) hearings will be held in the autumn. After examination and following consultation on any modifications proposed by the Inspector, the Council will be asked to adopt the M&WDPD.

Statement of Community Involvement

- 28 Section 18 of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to produce a Statement of Community Involvement (SCI), which explains how they will engage local communities and other interested parties in producing their local plan, neighbourhood plans and determining planning applications.
- 29 The SCI (Appendix 8) shows that the Council is committed to involving as many people and organisations as possible in the planning process, including those who are traditionally under-represented. It also sets out how we will support groups undertaking neighbourhood planning activity as well as giving advice on how neighbourhood planning groups should seek to continuously involve local people and groups in this activity.
- 30 The previous SCI was adopted in 2020. It has now been updated to reflect changes in how consultations are now undertaken including the increased emphasis on online events and the use of social media.

Background Papers

- County Durham Plan – Adopted 2020

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Appendix 1: Implications

Legal Implications

The Town and Country Planning (Local Planning) (England) Regulations 2012 set out how to prepare development plan documents and supplementary planning documents. Before the Minerals and Waste Development plan Document (M&WDPD) can be adopted, it is necessary to undertake a number of rounds of public consultation process. Additionally, in the case of the M&WDPD, an examination in public must be held. The Council's legal team have been involved throughout the preparation of the document.

Finance

As the DPD progresses there will be some costs for appropriate evidence gathering, consultation, printing and eventually the EIP costs. These costs will primarily be met from the Spatial Policy budget.

Consultation

The programme of consultation has been agreed with the Council's Corporate Communications Team and the Council's Consultation Officers Group and will be undertaken in accordance with the Statement of Community Involvement and the 2012 Local Plan Regulations.

Equality and Diversity / Public Sector Equality Duty

The Council acknowledges that, in exercising its functions, it has a legal duty under the Equality Act 2010 to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. This duty applies to all people defined as having protected characteristics under that legislation. The Council will carefully consider the likely impacts of the Plan on persons with a protected characteristic at each stage of the process. An EQIA has been prepared for the M&WDPD (Appendix 7), the nature of this document means that there are no identified negative or positive impact on the public in general, including all protected characteristics and so a full assessment is not required; it will be reviewed as appropriate.

Climate Change

Climate change is a thread running through the County Durham Plan. The importance of tackling and adapting to climate change is recognised in the Plan's Vision, Objectives, Sustainable Development Statement, spatial strategy and a number of policies. As the DPD sits below and reflects the policies and strategies of the County Durham Plan they similarly reflect this approach. The Publication Draft M&WDPD's content in relation to climate change has been revised and strengthened with greater emphasis being placed on the potential for minerals and waste sites to provide suitable

opportunities for renewable energy generation both during operation and as an afteruse. The Sustainability Appraisal predicts that the M&WDPD will have positive, overriding cumulative effects on climate change despite negative effects being predicted against a small number of policies. In this regard, collective measures are considered to outweigh negative effects.

Human Rights

Protocol 1 Article 1: Every natural or legal person is entitled to the peaceful enjoyment of his possessions, including their property. The Minerals and Waste DPD may allocate land for development which will affect landowners' rights to develop their land. It is noted, however, that rights afforded under this Article are not absolute but qualified. Therefore, any interference with landowner's rights must be balanced against the wider public interest in having an up to date development plan. It is lawful for a local planning authority to take action if that action is clearly necessary and proportionate.

Crime and Disorder

None.

Staffing

None.

Accommodation

None.

Risk

None.

Procurement

If required, consultants may need to be commissioned to deliver evidence studies, in accordance with the Council's procurement rules/procedures.