



COUNCIL CABINET 15 February 2023

ITEM 12

Report sponsor: Director of Planning, Transport and Engineering
Report author: Spatial Planning Group Manager

Derby & Derbyshire Minerals Local Plan – approval of plan for formal consultation and submission for examination

Purpose

- 1.1 Derby City and Derbyshire County Councils have been working jointly to prepare a new Minerals Local Plan (MLP) for the geographical County of Derbyshire, excluding the Peak District National Park. This will replace the existing MLP adopted in 2000 and amended in 2002.
- 1.2 A great deal of consultation has been carried out in formulating the plan to date, culminating in consultation on a full draft plan in March/April 2022. 3,560 representations from 463 separate individuals and organisations were received on this, although nearly 3,000 of these were the same letter seeking a more robust approach to addressing climate change, fossil fuels and fracking. Changes to the plan are recommended to address these concerns, whilst ensuring that it remains consistent with national policy. A document highlighting the main objections and supporting comments is attached as Appendix 3 to this report.
- 1.3 The next stage of the plan preparation process is to formally Publish what the two Councils consider to be the final version of the Plan and then to Submit this to the Secretary of State for Levelling Up, Housing and Communities for Examination by an independent Planning Inspector. If that Inspector finds the Plan to be Sound (usually requiring a number of modifications) he or she will direct the Councils to adopt it.
- 1.4 It is intended to Publish in February this year. This Publication Plan (Appendices 1 & 2) will be consulted on for eight weeks, extending into early April and so slightly into the pre-election period. Regulations then require the Plan to be Submitted to the Secretary of State, together with any representations made on it, usually without the need for further Cabinet/Council authorisation. For this reason, approval is sought for both Publication and Submission stages, but retaining the option to report back to Cabinet in between the two if representations raise significant new issues.
- 1.5 Submission of the Plan automatically triggers the Examination process, which is conducted by an independent Planning Inspector. The timetable for Examination hearings is set by the Planning Inspectorate and dependent on the availability of Inspectors, but it is hoped that these will take place towards the end of 2023 or early 2024. This would indicate that the Plan could be adopted by late 2024. In considering evidence at the hearings, Inspectors will often ask officers if they could accept various modifications to the plan. Authority is therefore sought for officers to offer minor changes where these will help the Inspector to move the Examination forwards.

- 1.6 Given the Publication Plan is what the two Councils consider to be a final plan rather than a draft, the report will need to be referred to Full Council for authorisation.
- 1.7 A number of technical and background papers are given in that section of the report. A Sustainability Appraisal, Climate Impact Appraisal and Equalities Impact Assessment are also appended.

Recommendations

- 2.1 To note the Report of Representations document, including recommended changes to the draft plan, attached as Appendix 3.
- 2.2 To agree the Derbyshire and Derby Minerals Local Plan attached as Appendices 1 & 2 and to authorise the Strategic Director of Communities and Place, together with the Cabinet Member for Regeneration, Decarbonisation, Strategic Planning and Transport to make minor changes to it in order to finalise it for Publication.
- 2.3 To agree that the Plan, together with any relevant background and supporting documents, is published in accordance with Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 and that a consultation is held on it for a period of eight weeks.
- 2.4 Provided that no significant issues emerge through the consultation on the Publication Plan, to authorise the Strategic Director of Communities and Place, together with the Cabinet Member for Regeneration, Decarbonisation, Strategic Planning and Transport to Submit the Plan for formal Examination and to make minor changes to it where necessary.
- 2.5 To authorise officers to offer minor modifications to the Examining Inspector for his or her consideration.
- 2.6 To refer this report to Full Council.

Reasons

- 3.1 To consider a summary of the comments made on the draft plan and the main changes being recommended as a result of these.
- 3.2 To enable the Publication of the Plan and Policies Map.
- 3.3 To enable the Publication of the Plan and Policies Map.
- 3.4 To enable Publication of the Plan provided no new significant issues are raised that would need to be referred back to Cabinet/Council.
- 3.5 To enable officers to quickly address issues of concern raised by the Inspector and allow for an efficient Examination process.
- 3.6 To authorise the Publication Plan.

Supporting information

Background

- 4.1 Derby City Council is the Minerals Planning Authority for the City of Derby and is required by law to prepare a Minerals Local Plan. To this end, DCC has been working with Derbyshire County Council to prepare a Joint Minerals Local Plan (MLP) to cover a plan period to 2038. This will be the main policy document used to assess planning applications for mineral development. This new plan, which will replace the existing one adopted in 2000 and amended in 2002, will cover the geographical county of Derbyshire, excluding the Peak District National Park.
- 4.2 Whilst there are no active or proposed sites in the city itself, the minerals industry is extremely important for the economy of Derbyshire as a whole, reflecting its position as one of the Country's leading producers of minerals, with limestone being the most important. The plan will, in any event, provide a suite of policies to guide the determination of planning applications for mineral development and mineral related development should they arise in the City.
- 4.3 A Joint Advisory Committee, made up of Members from both Authorities, steers the plan preparation process and makes recommendations to the appropriate Cabinet Member of each Authority.

Sustainable Minerals Development

- 4.4 In order to achieve sustainable mineral and mineral related development, the MLP is required to deliver three overarching and interrelated economic social and environmental objectives as set out in national policy:
 - An **economic objective** to provide sufficient land for the right type of development, in the right place at the right time to support growth, innovation and improved productivity.
 - A **social objective** to support strong, vibrant and healthy communities by providing well designed and safe places with accessible services and open spaces which meet the needs of the community.
 - An **environmental objective** to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising pollution and mitigating and adapting to climate change including moving to a low carbon economy.

- 4.5 Priorities for delivering sustainable minerals development are set out in the plan's vision and strategic objectives. It also includes a suite of strategic policies aimed at addressing these priorities and identifying sites for working together with non-strategic development management policies aimed at avoiding, minimising, and mitigating the adverse impacts of minerals development.

Work To Date

- 4.6 Work to date has focussed on formulating and consulting on draft policies and proposals under Regulation 18 of the of the Town and Country Planning (Local Planning) (England) Regulations 2012. There has been extensive consultation in drawing up the plan, leading to a full draft plan being consulted on for an 8 week period over March and April 2022.
- 4.7 A total of 463 individuals and organisations responded to the 2022 consultation and made a total of 3,560 separate representations. The representors included national government bodies and agencies, local authorities, mineral operators and other businesses, national and local interest groups, councillors, parish councils and individual members of the public. Approximately 70% of representors submitted the same letter of objection, mainly relating to climate change and fossil fuel issues accounting for 2,978 of the total representations.
- 4.8 A document highlighting the main objections and supporting comments is attached to this report as Appendix 3. Key points raised are:
- the need to strengthen climate change policies
 - no fossil fuel extraction
 - no hydraulic fracturing (fracking)
 - no net increase in greenhouse gas emissions
 - downstream emissions should be taken into account
 - there should be a buffer zone around any hydraulic fracturing site as endorsed by the Inspector and included in the MLP covering North Yorkshire, and
 - no mineral extraction unless alternatives not available

Responses to the Consultation Draft

- 4.9 At the JAC on 19th December 2022, officers provided an update on the consultation undertaken earlier that year and recommended alterations to the draft policies around the key themes of climate change, coal and hydrocarbons. The recommended alterations are incorporated into the proposed Publication Plan attached at Appendix 1 to this report. They raise the bar for what may be needed to address the climate change imperatives, whilst still complying with national planning policy.

4.10 The main areas of change are:

Climate Change

These policies have been strengthened to require climate change impact assessments that show how proposals will meet national and local carbon targets through a progressive reduction of carbon dioxide (and other greenhouse gas) emissions and achieve net zero emissions by 2050.

Coal

The policy has been strengthened to reflect the Government's commitment to phasing out coal for use in energy generation. To this end, the policy does not support proposals for coal extraction where the identified need is for electricity generation, although it does not include a blanket ban.

The policy has also been amended so that the climate change impact assessment will take into account the impact of indirect emissions associated with the use of the mineral.

Hydrocarbons (oil and gas)

The impact of using fossil fuels such as oil and gas on climate change is an important consideration and a similar policy approach in relation to indirect emissions from use of the mineral to that set out above for coal above is proposed for the same reasons.

Shale Gas and Hydraulic Fracturing (Fracking)

The process of producing shale gas via hydraulic fracturing is controversial nationally and locally. This was borne out in the number of objections received to the previous consultation.

National policy on fracking has been in a state of flux over the last few years and this has had an impact on the timetable for preparing the plan. A national moratorium against fracking was introduced in 2019 and the draft plan consulted on earlier this year was written with this approach in mind. More recently, a Written Ministerial Statement (WMS) issued under the Premiership of Liz Truss removed this moratorium and indicated it may be acceptable to frack provided there was evidence of local support. However, this position was reversed by the new Prime Minister, Rishi Sunak, soon after his appointment.

The latest WMS indicates the Government will only support shale gas exploration if it can be done in a way that is sustainable and protects local communities. It further makes clear that shale gas extraction will not be supported unless the science shows categorically that it can be done safely.

The British Geological Survey report on the scientific advances in hydraulic fracturing since 2019 indicates that forecasting the occurrence of large earthquakes and their expected magnitude resulting from shale gas extraction remains a challenge with significant uncertainty. The Government confirmed there is a presumption against issuing any further hydraulic fracturing consents. This means that the moratorium will be maintained until compelling new evidence is provided which addresses the

concerns around the process. Whilst future applications for hydraulic fracturing consent will be considered on their own merits by the Secretary of State, potential shale gas developers will need to take the Government's position into account when considering new proposals.

However, to add to the complexity, the National Planning Policy Framework has not changed throughout this period of flux and still identifies oil and gas (both conventional and unconventional hydrocarbons) as important minerals. As such, it still requires MPAs to plan for a steady and adequate supply, indicating that when planning for onshore oil and gas development, they should clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for.

Extracting shale gas through fracking is likely to lead to significantly greater impacts on local amenity than the exploitation of conventional and unconventional hydrocarbons where no or 'low volume' fracking takes place. Major fracking processes are likely to result in significant visual impacts due to the need for higher drilling rigs, large numbers of other equipment and larger well pads. Levels of NORM (naturally occurring radioactive material) are likely to be higher than other extraction processes and there will be greater traffic movements resulting from the delivery of water and removal of wastewater. Fracking processes are also likely to be undertaken over much longer time periods because of the depth of shale gas deposits, extending the duration of environmental impacts, for example, through night-time light and noise intrusion.

In light of the identified impacts, it is considered that a precautionary approach should be taken towards proposals for the exploitation of shale gas using 'high volume' fracking. The potential for adverse impacts will tend to increase the greater the proximity to 'sensitive receptors' and particularly where well sites and associated infrastructure are located 500 metres or less away. For this reason, it is proposed that where the distance proposed from a well site and associated infrastructure to sensitive receptors is 500 metres or less, proposals will not be supported unless, following a robust assessment and taking account of any proposed mitigation measures, it can be demonstrated that there would be no unacceptable impacts on the local amenity, health, well-being and safety.

The Publication Plan

- 4.11 The JAC met again on 16th January 2023 to consider the final version of the pre-submission 'Publication' MLP and resolved the following:

"The Committee agree that the pre-submission draft MLP, as presented to them (save any minor drafting changes), should be put forward to the Cabinet Meetings of the County and City Councils for approval to carry out public consultation under regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 as amended for a period of 8 weeks."

Supporting Documents

- 4.12 The Publication Plan will be supported by a number of other documents, including the Report of Representations, a Sustainability Appraisal, Climate Impact Assessment, Equalities Impact Assessment and a number of Background Papers. These are either Appended to this report or as 'Background Papers' which can be obtained from the County Council.

Public/stakeholder engagement

- 5.1 The policies and proposals being considered for consultation have been drawn up following an extensive process of consultation over several years. The Publication Plan itself will be consulted on for a period of 8 weeks. The 'Let's Talk Derby' platform will be used and links provided to the County Council's main web pages.

Other options

- 6.1 Alternative options have been identified and considered as part of the plan making process and through previous consultations.

Financial and value for money issues

- 7.1 The City Council contributes to the preparation of the Joint Plan and this is funded through the Council's Spatial Planning budget and Local Plan Reserve where necessary.

The City Council's contribution has typically included an element of Planning Officer time, a payment to Derbyshire County Council for production and printing costs, waived over recent years, and consultants fees to carry out Sustainability Appraisal work. The remaining SA work, which is a statutory requirement, is estimated to cost in the region of £10,000 up to and including the Examination. Approval has been obtained from the Spending Review Panel for this and sufficient funds have been identified in the Local Plan Reserve. The consultation itself will not have direct cost implications for the City Council.

Legal implications

- 8.1 The Joint Minerals Local Plan is a statutory plan and will form part of the Council's Development Plan once adopted. The Publication and Submission of the Plan will need to be carried out in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012, in particular Regulations 19 (Publication), 22 (Submission) and 24 (Examination).

Climate implications

- 9.1 Although there are no sites proposed for mineral extraction within the City itself, some minerals related traffic may use roads in Derby. The local plan is required by law to include policies designed to ensure that development proposals contribute to the mitigation of, and adaptation to, climate change. Policy SP2 Climate Change requires proposals to incorporate measures to minimise and offset greenhouse gas emissions and assist in the reduction of vulnerability from, and increase resilience to, future impacts of climate change. Policies have been tightened up following the previous consultation to include a requirement for climate change impact assessments.

A Climate Impact Assessment is included as Appendix 5.

Socio-Economic implications

- 10.1 The minerals industry is a very significant contributor to the economy of Derbyshire and whilst minerals are not worked within the city itself, access to a wide range of minerals and products derived from them is vital to its economy whether this be for construction, road building or energy.

Other significant implications

- 11.1 None.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Stephen Teasdale	
Finance	Janice Hadfield	
Service Director(s)	Verna Bayliss	
Report sponsor	Verna Bayliss	
Other(s)		

Background papers:	<p>Full Report of Representations on 2022 Consultation</p> <p>Supporting Papers: Spatial Overview Climate Change Secondary and Recycled Aggregates Sand and gravel, Crushed Rock Reducing Quarrying in the PDNP Building Stone Industrial Limestone Industrial Limestone Cement Brick Clay and Fireclay Vein Minerals Coal and Colliery Spoil Oil and Gas Conventional Oil and Gas Un-conventional Gas from Coal Safeguarding Mineral Resources</p>
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Safeguarding Minerals Infrastructure
Cumulative Impacts

Development Papers:

Strategic Priorities - Vision and Objectives
Sustainable Minerals Development
Climate Change
Secondary and Recycled Aggregates
Sand and gravel
Crushed Rock
Reducing the supply of aggregates from the PDNP
Building Stone
Industrial Limestone
Brick Clay and Fireclay
Vein Minerals
Coal and Colliery Spoil
Hydrocarbons
Safeguarding Mineral Resources
Safeguarding Minerals Infrastructure
Restoration of sand and gravel sites in the River Valleys
Development Management

Duty to Cooperate papers:

Introduction and Overview
Statement of Common Ground
Evidence

Assessment papers not appended:

Strategic Transport Assessment Stages 1 and 2
Habitats Regulations Assessment
Strategic Flood Risk Assessment
Sand and Gravel Sites Assessments
Sand and Gravel Sites Assessment Methodology
Health Impact Assessment

List of appendices:

Appendix 1:	Derbyshire and Derby Minerals Local Plan
Appendix 2:	Derbyshire and Derby Minerals Local Plan Policies Map
Appendix 3:	Report of Representations
Appendix 4:	Sustainability Appraisal
Appendix 5:	Climate Impact Assessment
Appendix 6:	Equalities Impact Assessment