



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

CABINET

2 February 2023

Report of the Executive Director - Place

Derbyshire and Derby Minerals Local Plan – Approval of Pre-submission Draft Minerals Local Plan for Publication and Formal Public Consultation
(Cabinet Member for Infrastructure and Environment)

1. Divisions Affected

1.1 County-wide.

2. Key Decision

2.1 This is not a Key Decision.

3. Purpose

3.1 To seek Cabinet approval for the content of the Derbyshire and Derby Pre-submission Draft Minerals Local Plan, attached at Appendix 2, and support for the Executive Director – Place, in liaison with Derby City Council, undertaking any minor amendments as necessary, and bringing the Plan and relevant background papers before the full Council for approval so as to enable:

- (i) their publication as the proposed submission documents for the joint minerals local plan for Derbyshire and Derby for the period up to 2038; and
- (ii) their use for public consultation in accordance with the relevant regulations with a period for making representations of eight weeks.

4. Information and Analysis

- 4.1 As a mineral planning authority (MPA), Derbyshire County Council is required by law to prepare a new minerals local plan. The law also requires that, generally, planning applications for development are determined in accordance with the local plans that are finally approved ('adopted') for the area. Thus, the adopted minerals local plan for an area is the main policy document that is used to assess planning applications for mineral development.
- 4.2 Derbyshire County Council and Derby City Council (also an MPA) have worked together to prepare a new Derbyshire and Derby Minerals Local Plan (MLP) covering the period to 2038 for the geographical county of Derbyshire (excluding the Peak District National Park). This new joint plan will replace the existing policies from the joint plan adopted in 2000 and amended in 2002.
- 4.3 The MLP will be an important, up-to-date, policy document for the Council to deliver sustainable minerals development. It will reflect Derbyshire's position as one of the country's leading producers of minerals, with limestone extraction being of both national and local significance.

The Derbyshire and Derby Minerals Local Plan to 2038

- 4.4 In order to achieve sustainable mineral and mineral-related development, national government policy (specifically in the National Planning Policy Framework 2022) directs that the MLP must deliver three overarching and interrelated objectives (economic, social, and environmental).
- The economic objective is 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.
 - The social objective is to support strong, vibrant and healthy communities by providing well designed and safe places with accessible services and open spaces that meet the needs of the community.
 - The environmental objective is 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 The draft MLP, as now proposed for publication, sets out priorities for delivering sustainable minerals development through its vision and strategic objectives. It includes a framework of strategic policies aimed at addressing those priorities, together with non-strategic, development management policies aimed at avoiding, minimising and mitigating the adverse impacts of minerals development. The strategic policies set out an overall approach for the pattern and scale of mineral development and make provision for the supply of minerals (including cross-boundary supplies) over the Plan period and where appropriate, identify specific sites for working.

Work to Date

- 4.6 Preparation of a local plan is a lengthy process and typically involves several stages of public engagement and consultation, both informal, as prescribed by the Town and Country Planning Regulations 2012. The process will culminate in the submission of the plan to the Planning Inspectorate, on behalf of the Department for Levelling Up, Housing and Communities (DLUHC), for Examination in Public.
- 4.7 The County and City councils are now at the end of the 'preparation' stage of plan making under Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012. This work culminated in a full draft MLP being consulted on for an eight week period last year, from 2 March 2022 to 29 April 2022. Several rounds of extensive public consultation and engagement had already been undertaken prior to this. All comments received in response to previous consultations were taken into account and used to inform the development of the policies of the Draft Proposed Minerals Local Plan consultation document.
- 4.8 To meet regulations 19 and 35 of the of the Town and Country Planning (Local Planning) (England) Regulations 2012, the next stage of the process is for the two councils to publish a version of the MLP as proposed for submission to the Inspectorate (known as a pre-submission draft), together with:
- (i) a sustainability assessment report,
 - (ii) a 'report of representations' detailing consultation carried out under Regulation 18 and the main issues involved
 - (iii) such supporting documents as in the opinion of the authorities, are relevant to the preparation of the local plan, and
 - (iv) a 'statement of representations' that will describe a process for consultation to be carried out on these documents.

- 4.9 People will be able to make representations about the pre-submission draft and associated documents within a time period to be specified in accordance with Regulation 20. It is proposed to specify a period of the same length of time as was used for the public MLP consultations previously carried out, namely eight weeks.
- 4.10 It is important to note that the Regulation 19 consultation is the final stage of public engagement before the MLP is submitted to the Inspectorate for examination. The matters to be considered and commented on by the public, other consultees and stakeholders at this formal stage may relate to legal compliance as well as the soundness of the MLP. The MLP should meet all legal requirements, including those under the relevant regulations. To be 'sound', the MLP should have been positively prepared, justified by evidence and effective in what it aims to achieve. Evidence is also required that, where necessary, the duty to co-operate on cross boundary matters has also been met. Generally, the MLP should also be consistent with national policy.
- 4.11 The Derbyshire and Derby Development Plans Joint Advisory Committee (JAC) consists of members from both councils and has provided valuable contributions to the preparation of the MLP and co-ordination of the associated public consultations. The JAC helped to shape and develop the Draft Proposed Minerals Local Plan which was subject to public consultation in March/April 2022.

Responses to the March/April 2022 consultation

- 4.12 A total of 463 individuals and organisations responded to this consultation and made a total of 3,560 separate representations. They included Government bodies and agencies, local authorities, mineral operators and other businesses, national and local interest groups, county councillors, parish/town councils and individual members of the public. Approximately 70% of the respondents used the same expression of objection, which mainly related to climate change and fossil fuel issues; this accounted for 2,978 of the total representations.
- 4.13 A report highlighting the main objections and supporting comments from the consultation is available on the Derbyshire County Council's website and has been sent to all councillors, interested stakeholders and those making representations.
- 4.14 The report identifies that key themes emerging from the Proposed Draft Plan consultation relate to concerns about, and objections to:
- the policies and text of the Vision and Objectives (990);

- Climate Change (1021); and
- Fossil Fuels (664) and Hydrocarbons (466).

4.15 More detail on the nature of the representations is set out in the Report of Publicity and Consultation and include themes such as:

- the need to strengthen climate change policies;
- no fossil fuel extraction;
- no hydraulic fracturing;
- 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.

4.16 All the comments received on these key themes and those regarding other policies and concerns and objections raised to site allocations in the draft Plan used for the consultation have been carefully considered in the final policy development and drafting for the pre-submission draft MLP. This work has also involved consideration of information to update the evidence base and, where relevant, of recent changes to national policy, legal and planning appeal decisions.

4.17 At the JAC on 19 December 2022 officers provided an update on suggested alterations to the draft policies around the key themes of climate change, coal and hydrocarbons as compared to the draft policies under the previous consultation draft. The alterations suggested are incorporated into the proposed pre-submission draft now attached at Appendix 2. They raise the bar for what may be needed to address the climate change imperatives, whilst still complying with national planning policy.

4.18 The suggested alterations stop short of saying “no” to fossil fuel extraction and hydraulic fracturing as this would currently be against the National Planning Policy Framework. An inspector at the Examination in Public would be likely to reject any policy that was absolutely against such development. The suggested approaches move the MLP forward from the proposed Draft Minerals Local Plan consulted upon earlier this year. The approaches suggested reflect some of the concerns of the Derbyshire public over climate change and hydraulic fracturing but also look to future-proofing policies as the climate change agenda comes more to the fore, and swings in national policy and uncertainty over hydraulic fracturing can be anticipated to continue.

4.19 The JAC supports the alterations being worked up into a final form of policy wording for the pre-submission draft MLP to include:

- A strengthening of the climate change policy to require:
 - Proposals to demonstrate a reduction in greenhouse gas emissions directly associated with the development over its lifetime in line with national and local greenhouse gas targets.
 - Proposals for coal extraction to demonstrate net zero emissions from the outset.
 - Proposals to be accompanied by a climate change impact assessment setting out how measures to reduce emissions and adapt to climate change have been considered, incorporated and will be monitored and reported.
 - The assessment to also include an assessment of whether there is a causal connection between the proposal and any impact on the environment associated with any indirect emissions and, whether this constitutes a significant indirect effect of the proposed development.
- A presumption against the use of coal for the purposes of electricity generation and a requirement that proposals for coal extraction are 'net zero' for the whole lifetime of the development (including restoration and aftercare).
- A more precautionary approach to proposals for the exploitation of oil and gas involving hydraulic fracturing, with the inclusion of a separation distance requirement for such proposals to protect the local amenity, health, well-being and safety of nearby sensitive receptors e.g. residences, schools, residential homes, hospitals etc. Where the distance proposed from a well site and associated infrastructure to sensitive receptors is 500 metres or less, proposals will **not** be supported in principle. These proposals will need to include a robust assessment of the adequacy of the proposed separation distances and any proposed mitigation measures to demonstrate the acceptability of impacts.

4.20 The pre-submission draft Derbyshire and Derby MLP is supported by a number of other documents which are considered relevant to the preparation of the local plan; they are listed in the Background Papers section of this report. The sustainability appraisal report and a report of representations (detailing all the comments and objections received to the March/April 2022 consultation and summarising the outcomes from them for the MLP), which are also within the background papers, complete what is required for publication in accordance with Regulation 19.

- 4.21 The JAC met on 16 January 2023 to consider the final version of the pre-submission draft MLP proposed for consultation under Regulation 19, that now forms Appendix 2, and to provide feedback regarding the carrying out of that consultation with this document.
- 4.22 The JAC expressed support for the putting forward of the proposed pre-submission draft MLP, as presented to them (save any minor drafting changes) for approval on behalf of the County and City Councils, to enable the carrying out of publication under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, and a consultation period of 8 weeks.

5. Consultation

- 5.1 Wide ranging public consultation will need to be carried out to accord with the adopted Statements of Community Involvement of both councils, as well as the regulations, for a period of eight weeks. This will include consulting district, borough, parish and town councils within and adjacent to the Plan area, statutory consultees, local community and interest groups, the industry. The consultation will include use of the 'Have Your Say' section of Derbyshire County Council's website and social media platforms, including a video promoting the consultation and inviting participation. Drop in sessions in the north, south, east and west of the Plan area will be held.

6. Alternative Options Considered

- 6.1 The only alternative option that might conceivably be chosen is for the Council to do nothing further towards adoption of a MLP based on the preparation work for a new MLP that has been carried out. Both councils would then be set back for a long time from completing preparation of an up to date MLP against which applications for minerals development could be assessed. As a consequence, the Councils might then run the risk of intervention by central government to take on the preparation of new minerals local plans for Derbyshire and Derby. There is no discernible benefit that would arise from taking this option, so to do so would appear to be likely to be irrational.

7. Implications

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

8. Background Papers

8.1 Derbyshire and Derby Minerals Local Plan Main 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
- Safeguarding Minerals Infrastructure
- Cumulative Impacts

8.2 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

8.3 Duty to Cooperate (DtoC) papers:

- DtoC Introduction and Overview
- DtoC Statement of Common Ground

- DtoC Evidence

8.4 Representations paper:

- Report of Representations on 2022 Consultation

8.5 Assessment papers:

- Sustainability Appraisal
- 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
- Equalities Impact Assessment
- Health Impact Assessment

9. Appendices

9.1 Appendix 1 – Implications.

9.2 Appendix 2 - Derbyshire and Derby Pre-submission Draft Minerals Local Plan.

10. Recommendations

That Cabinet resolves to:

- a) Approve the content of the Derbyshire and Derby Pre-submission Draft Minerals Local Plan, attached at Appendix 2.
- b) Support the Executive Director – Place, in liaison with Derby City Council, undertaking under delegated authority any minor amendments as necessary, and bringing the Plan and relevant background papers before the full Council for its approval so as to enable:
 - (i) their publication in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 as the ‘proposed submission documents’ for the joint minerals local plan for Derbyshire and Derby for the period up to 2038; and
 - (ii) their use for public consultation in accordance with regulations 19 and 35 with a period for making representations of eight weeks.

11. Reason for Recommendations

11.1 To enable the Council to be recommended to approve the Plan at Appendix 2 and the relevant background papers (with any necessary

minor amendments) as the proposed submission documents for publication in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 and use for associated public consultation in accordance with the Regulations.

12. Is it necessary to waive the call in period?

12.1 No.

Report Author: Michelle Spence

Contact details: Michelle.Spence@derbyshire.gov.uk

Implications

Financial

- 1.1 There will be a charge for hiring venues for drop-in sessions should they be held and for producing videos for publicising the consultation. This cost can be met from within existing budget.

Legal

- 2.1 The recommendation in this report is made having full regard to the County Council's responsibilities under the provisions of the Localism Act 2011, Planning and Compulsory Purchase Act 2004, Town and Country Planning Act 1990 and the Town and Country Planning (Local Planning) Regulations 2012.

Human Resources

- 3.1 None directly from this report.

Information Technology

- 4.1 None in particular. Publication in accordance with Regulation 19 of the 2012 regulations will involve making the relevant documents available through the councils' websites.

Equalities Impact

- 5.1 An Equalities Impact Assessment accompanies the Plan.

Corporate objectives and priorities for change

- 6.1 Adoption of the Minerals Plan is a corporate and Council Plan priority

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

- 7.1 There are significant environmental sustainability implications that are referred to in the main part of this report. These have been assessed in the preparation of the MLP.