

**Report of the Director of City Development**

**Report to Scrutiny Board (Sustainable Economy and Culture)**

**Date: 1 July 2014**

**Subject: Natural Resources & Waste Local Plan – Publication and Submission of Policies Minerals 13 and 14**

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): <b>City and Hunslet, Burmantofts and Richmond Hill, Garforth and Swillington and Rothwell wards.</b>		
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

**Summary of main issues**

1. The Natural Resources & Waste Local Plan was formally adopted by the Council on 16<sup>th</sup> January 2013 as part of the Local Development Framework (LDF). Subsequent to this, the Council received a High Court Challenge into a discreet part of the Plan, specifically policies Minerals 13 and 14 regarding the protection of rail sidings and / or canal wharves. The High Court found in favour of the claimants, however the Judge recognised the importance of the intent of the policies. Consequently, the Judge ordered that policies Minerals 13 and 14 be re-submitted to the Planning Inspectorate and be re-examined prior to their adoption.
2. The City Council commissioned a study to update the evidence base regarding the potential for the use of non-road based freight modes in Leeds (available from the report author). The study has been used to inform amendments to Policies Minerals 13 and 14. Based upon this new evidence, it is considered that the issues raised through the High Court Challenge have been addressed, through the revised policies. The revised Policies and explanatory text are included as an appendix to this Report. The next steps are to proceed to consultation on the revised Policies Minerals 13 and 14 for a 6 week period prior to submission of the updated Policies

to the Planning Inspectorate for re-examination as required under the Local Development Framework Regulations.

## **Recommendations**

Members of Scrutiny Board are invited to consider the content of this report and to comment as appropriate. In accordance with the Executive Board recommendation comments from Scrutiny Board will be considered initially by the Chief Planning Officer in conjunction with the Executive Member for Neighbourhood Planning and Personnel. Executive Board have been asked to agree the following:

- i) That the revised Policies Minerals 13 and 14 of the Natural Resources and Waste Local Plan and supporting text are published for a six week consultation period and that the Chief Planning Officer is authorised to consider any representations received.
- ii) To note that the Head of Forward Planning and Implementation is responsible for these matters and the consultation will be in July / August 2014.
- iii) Subject to there being no new significant issues raised, the Executive Board recommend to Full Council that they approve the submission of the revised policies to the Secretary of State for independent examination.
- iv) If significant new issues are raised through the consultation or by Scrutiny Board Members, to authorise the Chief Planning Officer, in consultation with the Executive Member for Neighbourhood Planning and Personnel, to review the proposals and to take such additional steps as are necessary before seeking approval from Council for submission.

## **1.0 Purpose of this Report**

- 1.1 Following the receipt of a study into the potential use of non-road based freight in Leeds, the City Council has made amendments to the wording of Policies Minerals 13 and 14 and the explanatory text, these are included in the attached Appendix, the former version of these policies and supporting text is also included at the back of Appendix 1 to enable an easy comparison of the changes. The next steps are for a six week consultation on the updated Policies Minerals 13 and 14. Providing no significant issues arise from the consultation, Full Council will then be asked to agree the re-submission of the Policies to the Secretary of State.
- 1.2 As well as containing specific planning policies and site allocations, the policies have an influencing role in supporting the City Council's wider strategic objectives for the environment. Policies Minerals 13 and 14 are relevant for the following Best Council Objective and Priority:
  - Providing a good and efficient transport and digital infrastructure. This reflects the Council's ambition to maximise the use of rail freight in the city and part of existing freight loading capacity.

## **2.0 Background Information**

- 2.1 The National Planning Policy Framework requires local planning authorities to safeguard existing, planned and potential rail heads, rail links to quarries, wharfage and associated storage, handling and processing facilities for the bulk transport by rail, sea or inland waterways of minerals, including recycled, secondary and marine-dredged materials. PPS10 requires local planning authorities to plan for the sustainable movement of waste.
- 2.2 Spatial Policy 8 of the Leeds Core Strategy (economic development priorities) recognises the need to support development at existing locations/sites for general industrial and warehouse use, particularly in locations which take full advantage of existing services, high levels of accessibility and infrastructure (including locations and sites accessible by rail and/or waterway).  
Policy EC1 of the Leeds Core Strategy identifies freight storage/distribution opportunities as part of the overall employment land requirements, focusing on the following locations:
- along rail corridors, particularly in the Aire Valley
  - along the Aire and Calder navigation.
- 2.3 The Natural Resources & Waste Local Plan contains a range of planning policies relating to Minerals & Aggregates, Water Resources, Air Quality, Sustainable Energy Use and Waste, as part of an overall integrated approach, which seeks to minimise and manage the use of natural resources through the following:
- planning for sufficient minerals & aggregates supply (whilst managing environmental assets and amenity),
  - planning for a shift to non-road based freight,
  - planning for municipal, commercial and industrial waste activity, including site specific allocations, (whilst seeking to reduce waste raisings overall)
  - Seeking to reduce flood risk, through mitigation and adaptation, in taking into account the effects of climate change.
- 2.4 Following Submission in July 2011, the Examination in Public into the Plan took place from 15<sup>th</sup> November to 8<sup>th</sup> December 2011. The Inspector recommended a number of changes to the Plan to make it sound and these changes were agreed by Members in April 2012 and then the subject of a six week public consultation. Responses to the consultation were sent to the Inspector for his consideration. The Inspector confirmed that there were no new issues arising that would warrant a re-opening of the Examination Hearing. The Plan and the modifications were therefore considered to be 'sound' and were adopted by Full Council on 16<sup>th</sup> January 2013.
- 2.5 Following adoption, a High Court Challenge was then received, submitted jointly by two parties both of whom are landowners with land affected by policies Minerals 13 and 14 in the Plan. The two policies are concerned with the second key issue above, ie. planning for a shift to non-road based freight. The landowners sought an order to quash policies Minerals 13 and 14 in so far as they related to the sites in their ownership.

2.6 The Hearing took place on 20<sup>th</sup> and 21<sup>st</sup> August 2013 with judgement on 24<sup>th</sup> September 2013. There were three grounds to the claim, firstly that the policies had not been based on a robust evidence base, secondly that there was a lack of evidence that the policies were deliverable and therefore could result in the long term sterilisation of land and thirdly that the Council had failed to comply with the SEA Directive by not assessing alternative uses on the sites. The Judge found in favour of the claimant on the first two of the three grounds submitted, on the basis that the independent Inspector who had examined the Plan had acted 'irrationally because his report did not adequately explain his reasoning with regard to those matters'. The Judge found in favour of the Council on the third ground of claim. As an alternative to quashing the sites from the Plan, she ordered that policies Minerals 13 and 14 should be remitted back to the Planning Inspectorate for re-examination.

### 3.0 Main Issues

3.1 As a basis to address the issues raised, the Council commissioned a study into the potential for non-road based freight in Leeds. This evidence base is summarised in a Freight Topic Paper and has been used to inform updates to Policies Minerals 13 and 14. This has given an opportunity for officers to address the concerns that were raised by the Judge with regard to ensuring that the policies are founded on a robust and credible evidence base and modifications have been made to the policies to address the weakness identified. Specific changes are shown in Appendix 1 and include the following:

- the omission of a reference to the potential for a wharf at Bridgewater Road South,
- the identification of an area between Holbeck and Stourton as an Intermodal Freight Area, where uses that can make use of the rail and water freight opportunities are encouraged,
- the modification of the criteria in Minerals 14 so that only one of the criteria need be met rather than all of them (to make the policy fit for purpose),
- to improve clarity, the sites affected have been named and listed within the policy (Maps are included in Appendix 1).

For comparison purposes, the former version of the Policies and supporting text is also included at the back of Appendix 1.

3.2 The Council now needs to formally consult on revisions and submit the policies to the Secretary of State for independent examination. Sustainability appraisal work and consultation under the 'Duty to Co-operate' is progressing well and has not identified any new significant effects as the intent of the policies is the same.

### 4.0 Corporate Considerations

As noted above, the Natural Resources & Waste Local Plan forms part of the Local Development Framework and as such forms part of the Development Plan

for Leeds. Policies Minerals 13 and 14 cannot be considered to be part of the Adopted Plan until they have been re-examined and found sound.

#### **4.1 Consultation and Engagement**

4.1.1 The Natural Resources and Waste Local Plan has been subjected to a number of public consultation exercises as part of its preparation and as required by the LDF Regulations. The Independent Inspector who examined the Plan indicated that he was content with the public consultation that had been undertaken at that time. In commencing the work on revising Policies Minerals 13 and 14, the Council carried out a 'Call for Evidence' inviting all interested parties to provide us with their latest information regarding the use of rail and water freight. Responses were limited but positive including from Network Rail and the Canal and River Trust. D. B. Schenker did not respond and Towngate responded to reinforce the view that they expected the policies to be based on a robust evidence base. Further consultation for six weeks will take place on the amended policies prior to their submission to the Planning Inspectorate.

#### **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 An Equality Impact Assessment Screening was carried out on the Natural Resources and Waste Local Plan when it was submitted to the Secretary of State for Examination. This report has been updated in the light of further changes to the Plan but has not resulted in any material change to the EIA Screening conclusion.

#### **4.3 Council Policies and City Priorities**

4.3.1 The Natural Resources and Waste Local Plan Policy Minerals 13 protects sites for non-road based freight and therefore helps to further the Council's objectives for sustainable transport.

#### **4.4 Resources and value for money**

4.4.1 Policies Minerals 13 and 14 are being prepared within the context of the LDF Regulations, statutory requirements and within existing resources. There are no specific resource implications for the City Council arising from the consultation.

#### **4.5 Legal Implications, Access to Information and Call In**

4.5.1 The Natural Resources and Waste Local Plan Policy Minerals 13 has potential to lead to a modal shift from road freight to rail and water freight and it therefore enables Leeds City Council to comply with the requirements of the European Air Quality Directive and thereby avoid penalties incurred for non-compliance. The final decision as to whether to submit the policies to the Secretary of State is being referred to Full Council, this report is being brought before this Scrutiny Board as part of the Budget and Policy Framework.

## **4.6 Risk Management**

- 4.6.1 Policies Minerals 13 and 14 are being prepared in accordance with the LDF Regulations and therefore this reduces the risk of them being unsound. The Freight Study and Marine Aggregate Study help to ensure that the updates to the policies are founded on a robust and credible evidence base and therefore reduces the risk of the policies being found unsound. However, the extent to which an evidence base can be considered to be sufficient is subjective and it will be up to the Inspector to examine this issue. Even after examination by an independent Inspector there is a risk that someone could mount a High Court Challenge again however the Council has taken all necessary steps to reduce the risk.

## **5.0 Conclusion**

- 5.1 Following an update to the evidence base regarding freight potential in Leeds, amendments have been made to Policies Minerals 13 and 14. A six week consultation is now required on the amended policies in accordance with the LDF Regulations. The City Council can then proceed to submit the policies for re-examination prior to their adoption.

## **6.0 Recommendations**

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## **7.0 Background documents<sup>1</sup>**

- 7.1 Although there are no formal background documents to this report, a substantial number of documents are available representing various stages in preparation of the Plan. These are available on the Natural Resources and Waste Local Plan web pages or by contacting Helen Miller on Leeds 2478132.

## **Appendices**

Appendix 1 Publication Draft of updated Policies Minerals 13 and 14

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[1] The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.