

Report of the Director of City Development

Report to Full Council

Date: 14th January 2015

Subject: Natural Resources & Waste Local Plan – 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): City and Hunslet, Burmantofts and Richmond Hill, Garforth and Swillington and Rothwell wards		
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 16th January 2013 as part of the Local Development Framework (LDF). However, following a High Court Challenge, policies Minerals 13 and 14 are to be re-examined prior to their adoption. This report is seeking authority to submit the revised policies to the Planning Inspectorate for re-examination. The revised policies and supporting text are attached as Appendix 1.
2. Minerals 13 and 14 provide protection for wharves and railway sidings to enable a modal shift to non-road based freight. The City Council has updated the evidence base on which these policies are founded and made revisions to the policies accordingly. It is considered that the issues raised through the High Court Challenge have been addressed through these changes.
3. Executive Board approval was given on 25th June 2014 for the revised policies and explanatory text to be subject to 6 weeks of public consultation. Executive Board also recommended Full Council to approve the revised policies for submission to the Secretary of State for independent examination, providing that no new significant issues are raised from the public consultation.

4. The consultation took place for 6 weeks from 7th November to 19th December 2014. An additional rail siding site has been suggested however without evidence from Network Rail to support it, it is not recommended that the Plan should be amended.

Recommendations

Council is asked to agree the following:

- i) Approve the submission of the revised policies and supporting text to the Secretary of State for independent examination.

1.0 Purpose of this Report

- 1.1 The City Council has an ambition to maximise the use of rail and water freight in the city. Policies Minerals 13 and 14 are an important step towards achieving this objective. A High Court Challenge into policies Minerals 13 and 14 has resulted in the need to re-submit the policies to the Planning Inspectorate for re-examination. The purpose of this Report is to obtain Council approval for the re-submission of the Policies to the Secretary of State for re-examination prior to their adoption. The policies are attached to this report in Appendix 1.
- 1.2 Policies Minerals 13 and 14 support the City Council's wider strategic objectives for the environment by encouraging a form of freight transport that has lower carbon emissions compared to road. They are also relevant for the following Best Council Objective:
- Promote Sustainable and Inclusive Economic Growth. This will be achieved by giving the support needed to business to invest in a modal shift from road to rail and water freight, as these are low carbon forms of freight transport that also help business to remain competitive.

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.
- 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 was formally adopted by the Council on 16th January 2013 as part of the Local Development Framework (LDF). It contains policies regarding minerals, waste, flood risk, energy and air quality. A key objective is planning for a shift to non-road based freight, to be achieved by the protection of wharves and rail sidings through policies Minerals 13 and 14.
- 2.4 Following adoption, a High Court Challenge was received, submitted jointly by two parties both of whom are landowners with land affected by policies Minerals 13 and 14. The landowners sought an order to quash policies Minerals 13 and 14 in so far as they related to the sites in their ownership.
- 2.5 The Hearing took place on 20th and 21st August 2013 with judgement on 24th September 2013. There were three grounds to the claim. Firstly, that the policies had not been based on a robust evidence base. Secondly, there was a lack of evidence that the policies were deliverable and therefore could result in the long term sterilisation of land. 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 Policies Minerals 13 and 14 are now ready to be submitted to the Planning Inspectorate for re-examination. The Council commissioned a study into the potential for non-road based freight in Leeds. This study 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 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 to 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.

- 3.2 Executive Board approval was given on 25th June 2014 for the revised policies and explanatory text to be subject to 6 weeks of public consultation. The Council has formally consulted on these revisions from 7th November to 19th December 2014. Sustainability appraisal work and consultation under the 'Duty to Co-operate' has not identified any new significant effects as the intent of the policies is the same.
- 3.3 The results of the consultation are mostly positive and supportive of the policies. Previous objectors, Towngate Plc and D.B. Schenker, have submitted objections although they have also made supporting comments. Towngate Plc no longer object to the safeguarding of the wharf on their land at Haigh Park Road.
- 3.4 A response has been received from a rail freight company asking for rail sidings at Whitehall Yard to be safeguarded. The Council had previously recommended safeguarding Whitehall Yard at the Preferred Options stage of the Plan. Following a response from Network Rail to say that due to the restricted length of siding and because it is very difficult to access by rail - given the heavy flow of passenger traffic emanating from Leeds station, they did not recommend safeguarding and therefore the site was not included in the Publication Draft of the Plan. The Council has not received any evidence from Network Rail to suggest that circumstances have changed and therefore it is not considered that the Plan should be amended at this point in time. If during the Examination in Public, information is presented to support the safeguarding, then the Council would not be opposed to the inclusion of the site as a safeguarded rail siding.
- 3.5 Executive Board also recommended Full Council to approve the revised policies for submission to the Secretary of State for independent examination, providing that no new significant issues are raised from the public consultation. The consultation has finished now and there are no new significant issues that would warrant amending the Plan at this point in time. Full Council are now requested to authorise the submission of the policies to the Secretary of State for independent examination.

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 undertaken at that time. A six week consultation has now taken place on the amended policies and the results of this have not produced any issues that suggest the Plan should be amended at this point in time.

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. The EIA Screening was published when the report went to Executive Board in June 2014.

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 and low carbon investment.

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 Government operates a 'Water Preferred Policy' for the movement of abnormal loads and Minerals 13 aids the compliance with that policy by ensuring that there are waterside sites for loading and unloading. This Report was also sent to the Sustainable Economy and Culture Scrutiny Board meeting on 1.7.14 for them to note the contents. The final decision as to whether to submit the policies to the Secretary of State is being referred to Full Council as part of the Budget and Policy Framework and therefore this report is not eligible for Call In.

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 reduce 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 reasonable 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 has taken place on the amended policies in accordance with the LDF Regulations. The City Council can now proceed to submit the policies for re-examination prior to their adoption.

6.0 Recommendations

Full Council is asked to agree the following:

- i) Approve the submission of the revised policies and supporting text to the Secretary of State for independent examination.

7.0 Background documents¹

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.

Appendix 1

The revised policies and supporting text are attached as Appendix 1.

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.