

Open Report on behalf of Andy Gutherson, Executive Director - Place

Report to:	Environment and Economy Scrutiny Committee
Date:	12 January 2021
Subject:	Review of the Lincolnshire Minerals and Waste Local Plan

Summary:

This report invites the Environment and Economy Scrutiny Committee to consider a report on the Review of the Lincolnshire Minerals and Waste Local Plan, which is due to be considered by the Executive on 2 February 2021. The views of the Committee will be reported to the Executive as part of its consideration of this item.

Actions Required:

The Committee is invited to: -

- 1) Consider the attached report and to determine whether it supports the recommendation to the Executive as set out in the report.
- 2) Agree any additional comments to be passed on to the Executive in relation to this item.

1. Background

On 2 February 2021 the Executive is due to consider a report on the Review of the Lincolnshire Minerals and Waste Local Plan, which is attached as Appendix 1 to this report.

2. Conclusion

Following consideration of the attached report, the Committee is requested to consider whether it supports the recommendation in the report and whether it wishes to make any additional comments to the Executive. Comments from the Committee will be reported to the Executive on 2 February 2021.

3. Consultation

This Committee is being consulted on the proposed decision of the Executive on 2 February 2021.

4. Appendices

These are listed below and attached at the back of the report	
Appendix 1	Report to the Executive on 2 February 2021 on the Review of the Lincolnshire Minerals and Waste Local Plan, including: Appendix A - Review of the Lincolnshire Minerals and Waste Local Plan Appendix B - Lincolnshire Minerals and Waste Development Scheme (Proposed) Appendix C - Equality Impact Analysis

5. Background Papers

No background papers, as defined in the Local Government Act 1972, were relied upon to a material extent in writing this report.

This report was written by Adrian Winkley, who can be contacted on 07867 139608 or adrian.winkley@lincolnshire.gov.uk

Open Report on behalf of Andy Gutherson, Executive Director - Place

Report to:	Executive
Date:	02 February 2021
Subject:	Review of the Lincolnshire Minerals and Waste Local Plan
Decision Reference:	I021361
Key decision?	Yes

Summary

A provisional review of the Lincolnshire Minerals and Waste Local Plan (LMWLP) has recently been undertaken by officers in accordance with the statutory procedure ("the Review") (Appendix A). This concludes that the following policies are not fully effective and should be updated:

- Policy M1 (Recycled and secondary aggregates)
- Policy M4 (Proposals for sand and gravel extraction)
- Policy M5 (Limestone)
- Policy M11 (Safeguarding of Mineral Resources)
- Policy M13 (Associated Industrial Development)
- Policy W1 (Future requirements for new waste facilities)
- Policy W3 (Spatial strategy for new waste facilities)
- Policy W4 (Locational criteria for new waste facilities in and around main urban areas.
- Policy W6 (Landfill)
- Policy W7 (Small scale waste facilities)
- Policy SL3 (Waste site and area allocations)

In addition, it concludes that the other policies would benefit from being updated in order to:

- improve the clarity and focus of the policies;
- ensure greater consistency between the policies;
- allow any subsequent changes to legislation/national policy to be incorporated into the updated plan;
- ensure account is taken of any new social, economic and environmental priorities (including those arising from the pandemic); and
- enable greater public involvement in the process.

Subject to the Executive's endorsement of the Review, the approval of the full County Council will be sought to update the LMWLP. Work on the update would primarily be undertaken by the in-house Minerals and Waste Policy Team, but with some supporting documents prepared by external consultants.

The process would be carried out in accordance with the programme set out in the proposed Lincolnshire Minerals and Waste Development Scheme (Appendix B) involving a number of stages - each requiring public consultation.

Recommendation(s):

1. That the Executive endorses the Review of the Lincolnshire Minerals and Waste Local Plan (Appendix A) and recommends to the full County Council that the whole Lincolnshire Minerals and Waste Local Plan is updated in accordance with the programme set out in the proposed Lincolnshire Minerals and Waste Development Scheme (Appendix B)
2. That the Executive authorises the Head of Planning Services to make any minor amendments to the Review of the Lincolnshire Minerals and Waste Local Plan (Appendix A) and the Lincolnshire Minerals and Waste Development Scheme (Appendix B) before they are considered by the full County Council, which may be necessary to allow them to be published on the County Council's website.

Alternatives Considered:

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| 1. | Not to update the Lincolnshire Minerals and Waste Local Plan. |
| 2. | To undertake a partial updating of the Lincolnshire Minerals and Waste Local Plan restricted to those policies where the review has identified specific issues. |

Reasons for Recommendation:

The first alternative was dismissed because the evidence indicates that a number of policies are not effective and need to be updated.

The second alternative was dismissed because restricting the update to specified policies would lose an opportunity to improve the content of the overall plan.

In addition, both of the above options would require full public consultation, which could lead to legal challenge from any aggrieved parties.

1. Background

- 1.1 The County Council is the mineral and waste planning authority for the county of Lincolnshire and is responsible for the production, monitoring, review and updating of a minerals and waste local plan. The current plan, the Lincolnshire Minerals and Waste Local Plan (LMWLP), was produced in two parts:
- the Core Strategy and Development Management Policies (CSDMP) document adopted on 1 June 2016 – which sets out the key principles to guide the future winning and working of minerals and the form of waste management development in the county up to 2031, together with the development management policies against which applications will be considered; and
 - the Site Locations document (SLD) adopted on 15 December 2017 - which identifies specific sites and preferred areas for mineral extraction and for the location of waste facilities.
- 1.2 Under regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended), the County Council is required to review its local plan at least every five years from the date of adoption. The term "review" relates specifically to the limited process of assessing whether the policies in the plan remain relevant and effective. Where this is the case, the County Council simply needs to provide evidence of this and can keep the existing plan unchanged. On the other hand, if the policies are found to be deficient in some respect, the County Council needs to consider moving onto the next stage, which is the formal updating of the plan.
- 1.3 Under current procedures both parts of the plan would need to be reviewed and, if necessary, updated as a single document. As a result the review needs to be carried out within five years from the date of the adoption of the first part of the plan (i.e. by 1 June 2021). National Planning Practice Guidance (PPG) states a review should be proportionate to the issues in hand, but that most local plans are likely to require updating in whole or in part at least every five years. It does not provide specific guidance on how a review of a minerals and waste local plan should be carried out, but does provide some general guidance, albeit focussed on the review of district council local plans.
- 1.4 In preparation for meeting the deadline the plan has been reviewed by officers and the provisional findings set out in the report attached as Appendix A, referred to in this report as "the Review". This considers a number of issues, which in part have been adapted from the guidance in the PPG to make them relevant to minerals and waste development. These issues together with the findings are summarised below.

Issue 1: Whether the policies of the LMWLP are performing successfully against the indicators set out in that plan (as assessed each year in the county council's Annual Monitoring Reports (AMRs))

1.5 The most significant concerns identified in the Review relate to the following policies:

- **Policy M4 (Proposals for sand and gravel extraction)** - the policy does not appear to provide sufficient flexibility for determining applications. In particular, the policy does not specifically allow the extraction of sand and gravel from small areas of land adjacent to existing quarries, which would otherwise become sterilised if not worked as part of the existing operations. As a result three applications have been granted planning permission which did not strictly accord with the policy.
- **Policy M11 (Safeguarding of mineral resources)** - this policy aims to safeguard important mineral resources for potential future use by preventing incompatible forms of development, such as housing, from sterilising the mineral deposits. Under the safeguarding procedure, the district councils of Lincolnshire (the planning authorities for most forms of non-minerals/waste development) are required to consult the County Council with respect to planning applications falling within Mineral Resource Safeguarding Areas, other than those exempted by the policy. Where applications are caught by this policy, they should be accompanied by a mineral resource assessment. Unfortunately, in practice this has included a large number of applications (225) where in the opinion of officers it would be unreasonable to ask the applicants to commission a mineral resource assessment due to the limited nature of the proposed development. This, however, represents a pragmatic approach to the implementation of the policy, rather than strict adherence to it. In addition eight applications have been granted planning permission by the district councils despite safeguarding objections from the County Council. The policy is therefore not considered to provide an efficient approach to safeguarding mineral resources.
- **Policy M13 (Associated Industrial Development)** - this policy deals with planning applications for industrial development within or in proximity to mineral sites. To comply with the policy the development must have close links with the minerals development. However, contrary to this policy, the County Council has granted four planning permissions for industrial development where the links with the associated mineral site are more tenuous. Therefore the policy may either be too restrictive or the close link criterion may need to be given greater emphasis.
- **Policy W6 (Landfill)** - sets out a strict approach to landfill, which only allows planning permission to be granted where several criteria are met. This includes a requirement to demonstrate that current capacity within the county is insufficient. Two applications have, however, been granted

where this criterion was not met, which may indicate that the policy is too restrictive or that the criterion needs to be given greater emphasis.

Issue 2: Whether the County Council's decisions are being upheld on appeal

- 1.6 Appeals have been made against two decisions to refuse planning permission for the extraction of limestone that were considered to be contrary to **Policy M5 (Limestone)**. One appeal for a site at Denton was dismissed whilst another at Dunston was allowed.
- 1.7 Given that Lincolnshire has sufficient permitted reserves of limestone for the plan period, Policy M5 is a very restrictive policy which requires a "need" to be demonstrated. In practice, however, the appeal decision at Dunston has demonstrated the difficulties of assessing whether there is a "need". The policy also lacks flexibility to allow small extensions to existing quarries, which would otherwise maintain jobs and competition.

Issue 3: Whether any other concerns have come to light over the implementation of the policies, which are not identified through the policy indicators

- 1.8 The Review has identified concerns with a number of policies, but the most significant are considered to relate to the following:
- **Policy M1 (Recycled and secondary aggregate)** is linked to policy W4 which restricts such development to locations in and around the main urban areas, other than small scale development. The County Council has, however, been prepared to grant planning permission for such facilities at quarries not meeting the criteria of policy W4.
 - **Policy M11 (Safeguarding of mineral resources)** – in addition to the concerns identified under Issue 1, the policy is generating too many consultations that fall within the exemptions to the policy, and could be considered too extensive in terms of the areas covered.
 - The interlinked **Policies W3 (Spatial strategy for new waste facilities)** and **W4 (Locational criteria for new waste facilities in and around main urban areas)** are considered to be too complicated and difficult to interpret.
 - **Policy W7 (Small scale waste facilities)** is limited to small scale facilities, but does not define "small scale". Although the supporting text provides indicative scales, in practice planning permissions are being granted that exceed these scales.

Issue 4: Whether the LMWLP makes sufficient provision for a steady and adequate supply of aggregates

- 1.9 Based on evidence set out in the County Council's latest Local Aggregate Assessment (December 2019), it is considered that the LMWLP has made sufficient provision for a steady and adequate supply of aggregate over the plan period ending in 2031. However, if the plan is updated, the level of provision will need to be increased to cover the extended period of the updated plan.

Issue 5: Whether there are likely to be any significant changes to the assumptions and forecast waste management capacity gaps set out in the County Council's Waste Needs Assessments that underpin the LMWLP

- 1.10 Work on a new Waste Needs Assessment is currently being commissioned. If the County Council sanctions the updating of the LMWLP, it will be underpinned by the new Waste Needs Assessment and will need to plan for the capacity gaps identified in that document.

Issue 6: Whether any issues have arisen that may impact on the deliverability of key site allocations

- 1.11 Only one mineral site allocated in the SLD has not been delivered by the anticipated date: an extension to the North Kelsey Road Quarry (MS09-CL). This, however, is a very small site containing 0.15mt of building sand. Whilst this might affect the availability of building sand in the area, overall it will have a negligible impact on the plan's delivery of sand and gravel. No other issues have been identified over the deliverability of key site locations for mineral working.
- 1.12 The approach to waste management is largely criteria driven. The SLD has allocated large areas of "employment land" (as defined in the relevant district council local plans) that would also be suitable for waste management under **Policies W1 (Future requirements for new waste facilities) and SL3 (Waste site and area allocations)**. However, most sites that have been granted to date, whilst meeting the criteria of the CSDMP, are not located within the allocated areas. Consequently, whilst the criteria based approach is delivering the waste management facilities needed, the fact that most of these sites are not allocated has cast doubt over the value of Policies W1 and SL3.

Issue 7: Whether the LMWLP conforms with the policies of the National Planning Policy Framework and the National Planning Policy for Waste

- 1.13 The changes made to the NPPF since the adoption of the CSDMP and SLD have made little impact on national minerals and waste policy. However, updating the LMWLP would provide an opportunity to consult on this issue and, if necessary, amend any policies to ensure the plan remains sound.

Issue 8: Whether plan-making activity by other authorities impacts on the level of future provision that the county council needs to make for mineral working and waste management having regard to the statutory duty to cooperate procedures

- 1.14 Concerns have been raised on the emerging mineral local plans of three neighbouring authorities which are not considered to be making adequate provision for a steady and adequate supply of sand and gravel from their own indigenous sources. In particular, an objection has been made against the Nottinghamshire Minerals Local Plan because if adopted it is likely to result in Lincolnshire having to continue to make significant (unplanned) exports to that county. That plan is currently under examination with the Inspector's report expected early in 2021.

Issue 9: Whether any other "drivers of change" are impacting on the LMWLP

- 1.15 The Review has considered new social, environmental and economic priorities that have arisen since the LMWLP was adopted, but has concluded that none are of such significance as to require an updating of the plan. However, if the plan is updated it will provide an opportunity to take into account any new priorities that emerge during plan preparation (including any arising from the pandemic).

2. Legal Issues

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others. The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

An Equality Impact Analysis has been carried out and is attached to this report as Appendix C. No positive or adverse impacts have been identified.

Should the full County Council sanction the updating of the LMWLP, this would be carried out in several stages in accordance with the programme set out in the proposed Lincolnshire Minerals and Waste Development Scheme (Appendix B). Each stage would be subject to public consultation in accordance with the adopted Statement of Community Involvement (SCI). This seeks to ensure that all sections of the community with an interest in a particular area will be engaged. In particular, it requires effort to be made to identify and engage under-represented and seldom heard groups in Lincolnshire, including those with the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation. The SCI recognises that within a sparsely populated county such as Lincolnshire it is important to ensure the involvement of groups including rural communities suffering from isolation. Challenges encountered by the above groups range from accessibility to venues, language barriers, social differences and types of media being used. Specific organisations aimed at targeting these groups, would be identified with assistance from the Council's Community Engagement Team for consultation purposes. Appropriate locations and a variety of media would also be employed.

Comments received through the consultation procedures relating to protected characteristics would be reviewed at each stage of plan preparation.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS) in coming to a decision.

It is considered that the updating of the whole LMWLP would contribute to the aims of the JSNA and JHWS by providing an opportunity to consult/publicise on policies relating to the environmental impacts of mineral/waste development (and how these would be mitigated) and to the beneficial reclamation/after use of such sites.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

This obligation has been considered, but is not thought to be directly affected by the proposals in this report.

3. Conclusion

3.1 The Review has concluded that 11 of the policies in the LMWLP need to be updated. Furthermore, while no significant issues were identified with the other policies, the Review has concluded that it would still be appropriate to update them in order to:

- improve the clarity and focus of the policies;
- ensure greater consistency between the policies;
- allow any subsequent changes to legislation/national policy to be incorporated into the updated plan;
- ensure account is taken of any new social, economic and environmental priorities (including those arising from the pandemic); and
- enable greater public involvement in the process.

- 3.2 In contrast to the existing LMWLP (which in the earlier stages was largely prepared by external consultants), the updating of the plan would primarily be undertaken by the in-house Minerals and Waste Policy Team. This would reduce costs and allow considerable refinement of the plan by officers with more knowledge of the county and with experience of the existing plan's shortcomings. Some specialised documents would, however, need to be prepared externally. These include a new Waste Needs Assessment and documents associated with the Sustainability Appraisal/Strategic Environmental Assessment.
- 3.3 The decision to proceed with an update rests with the full County Council. The Executive is therefore being asked to endorse the Review and to recommend to the full County Council that the LMWLP is updated in accordance with the programme set out in the proposed Minerals and Waste Development Scheme attached to this report as Appendix B.

4. Legal Comments:

The recommendation is in accordance with the statutory obligations of the Council under Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012.

The Minerals and Waste Local Plan forms part of the Policy Framework and the decision whether to review the Plan is therefore within the remit of the full Council having regard to the recommendation of the Executive.

5. Resource Comments:

The majority of the work necessary to update the LMWLP is expected to be undertaken by the LCC Minerals and Waste Policy Team. However, consultancy support is envisaged being required for some specialised documents, the cost of which will be met from within the Place directorate's existing budgets.

6. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

This report will be considered by the Environment and Economy Scrutiny Committee on 12 January 2021. Any comments will be reported to the Executive.

d) Risks and Impact Analysis

See the body of the report and Appendix C.

7. Appendices

These are listed below and attached at the back of the report	
Appendix A	Review of the Lincolnshire Minerals and Waste Local Plan
Appendix B	Lincolnshire Minerals and Waste Development Scheme (Proposed)
Appendix C	Equality Impact Analysis

8. Background Papers

Core Strategy and Development Management Policies (2016)	www.lincolnshire.gov.uk
Site Locations document (2017)	www.lincolnshire.gov.uk
Authority Monitoring Reports (January-December) 2017/2018/2019	www.lincolnshire.gov.uk
Lincolnshire Local Aggregate Assessment (December 2019)	www.lincolnshire.gov.uk
Statement of Community Involvement (September 2019)	www.lincolnshire.gov.uk

This report was written by Adrian Winkley, who can be contacted on 07867 139608 or adrian.winkley@lincolnshire.gov.uk

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