
**Decision Session - Executive Member of
Economy and Strategic Planning**

27th July 2021

Report of the Interim Assistant Director - Place Directorate

Summary

1. The Minerals and Waste Joint Plan (“MWJP” or “Joint Plan”) will set out new planning policies for minerals and waste developments across the Joint plan area of York, North Yorkshire and the North York Moors to guide decisions on planning applications up to 31 December 2030.
2. This report is to inform the Executive Member of Economy and Strategic Planning of the main modifications required to be made to the Minerals and Waste Joint Plan following Submission to Secretary of State and the associated Hearing Sessions held during Spring 2018 and January 2019. The report also provides information on the main modifications public consultation taking place for 8 weeks between Wednesday 21st July and 5pm on Wednesday 15th September 2021, in accordance with the Planning and Compulsory Purchase Act 2004 and The Town and Country Planning (Local Planning) (England) Regulations 2012.

Recommendations

3. The Executive Member is asked to:
 - i. endorse the Main Modifications to the Minerals and Waste Joint Plan and subsequent period of public consultation.

Reason: To inform interested parties of the Minerals and Waste Joint Plan main modifications and associated public consultation.

Background

4. The Minerals and Waste Joint Plan (MWJP) is being produced by North Yorkshire County Council (NYCC), the City of York Council (CYC) and the North York Moors National Park Authority (NYMNP). It will contain

planning policies for minerals and waste developments in the Joint Plan area until 31 December 2030.

5. The Joint Plan has been through the following production stages:
 - Preparation of the Minerals and Waste Joint Plan: May 2013 to October 2016
 - Publication: November 2016
 - Addendum of proposed changes: July 2017
 - Submission: November 2017
 - Examination hearings:
 - Opened on Tuesday 27 February 2018 and were held over the following three weeks (27 February to 23 March 2018).
 - An additional session was held on the 13 April 2018.
 - The inspector held a further additional session, relating to unconventional oil and gas on Thursday 24 and Friday 25 January 2019.
6. On 6th March 2019 a High Court Judgment was released relating to a challenge to paragraph 209(a) of the National Planning Policy Framework July 2018, which dealt with on-shore gas development. Parties were given time to consider the judgment and what consequential remedies should be before the final order was made on 14 May 2019. The Order of 14 May 2019 declared the Secretary of State's decision of 24 July 2018 to adopt paragraph 209(a) of the revised Framework unlawful, and quashed it.
7. The Inspector invited the joint authorities and any interested parties to comment on the High Court Judgement and Order and the implications for the Joint Plan. The Authorities response confirmed that due regard has been given to extant policy and other relevant considerations in reaching a balanced view on an appropriate and justified approach for hydrocarbon policies in the MWJP.
8. In response¹, the Inspector confirmed: “I have considered all the representations concerning the *Stephenson* judgement and the quashing of NPPF 209a. Due to the uncertainties arising from the scientific evidence, particularly over methane emissions from hydraulic fracturing, and the consequential uncertainties over the potential impact this could have on air quality in the vicinity of nearby receptors, **I am content that the retention of the 500m buffer zone in the Plan is**

¹ [Inspectors response INS/16](#)

sound” [CYC emphasis]...“I have considered the further proposed main modifications/amendments to proposed main modifications advanced by the Minerals Planning Authorities, and I am content that they are justified to make the Plan sound” subject to clarifying references to climate change emissions monitoring. Additionally, the Inspector requested an updated schedule of modifications.

9. Work has also been ongoing on the Joint Plan Habitat Regulation Assessment (HRA) in response to the decision at the Court of Justice of the European Union (CJEU)². This has led to a reassessment of a series of sites that are identified in the draft Minerals and Waste Joint Plan at the Appropriate Assessment stage, as follows, (please note that none of the sites are within the City of York Council local authority area):
 - MJP 12 / MJP 13 – Whitewall Quarry, Norton
 - MJP14 – Ripon Quarry, North Stainley
 - MJP15 – Blubberhouses
 - WJP16 Common Lane, Burn
 - MJP 55 / WJP 06 – Land adjacent to former Escrick Brickworks
 - MJP 63 – Browns Quarry, Malton
10. Consultation on the Appropriate Assessment has involved Statutory Consultation with the Environment Agency and Natural England. A response from the Environment Agency was received at the end of August 2020 to indicate they were in agreement with the Appropriate Assessment. Natural England, in their response, raised some concerns over a 100m ‘Zone of Influence’ for the designated nature conservation sites, which they indicated was too short. The Joint Authorities consultants have now clarified this issue and correspondence in mid-October 2020 and January 2021 confirmed Natural England are now satisfied with the Appropriate Assessment and HRA. The Appropriate Assessment work has also been taken into consideration in the Sustainability Appraisal (SA), which also includes an update to refer to the Paris Climate Change Agreement.
11. The current stage for the Joint Plan is the main modifications stage. This presents for consultation the main modifications schedule proposed in order to make the Plan ‘*sound*’ (i.e. one which is positively prepared, justified, effective and consistent with national policy). This statutory stage is for the proposed main modification wording to be subject to a minimum of 6 weeks of public consultation together with a sustainability

² in the matter of People Over Wind and Sweetman v Coillte Teoranta (C- 323/17)

appraisal (SA) of those modifications. This is an 8 week consultation, two weeks have been added to the statutory timescale to make allowance for consultation being over the main summer holiday period. It is considered that this additional period of time is sufficient to allow enough time for interested parties to respond.

Main Modifications

12. The full schedule of Main Modifications to the Joint Plan can be found in Annex A to this the report.

Key Main Modification

13. The key Main Modifications proposed and pertinent to the City of York Council Authority relate to:
 - Policies in relation to hydrocarbons (M16 and particularly Policy M17 and its justification, this includes new government guidance and although challenged through the process the retention of the 500m buffer around sensitive receptors.
 - additional references to Climate Change,
 - references to Green Belt and York's Historic Character and Setting to be in line with national policy; and
 - the review and monitoring of the Joint Plan.

Hydrocarbon Policy

14. The hydrocarbon policies in the Joint Plan continue to provide a precautionary approach. The polices provide protection from impacts from shale gas development regardless of the volume of fracture fluid used, continue to give protection to a broad range of designated areas in relation to unconventional hydrocarbons development, including the historic character and setting of York and it's heritage assets; which require particularly strong scrutiny of hydrocarbon proposals within 500m of residential buildings and other sensitive receptors.
15. References reflecting new evidence is provided as a Main Modification at MM35 (paragraph 5.93). This reflects the Government's moratorium on hydraulic fracturing by introducing a presumption against the issuing of any further hydraulic fracturing consents, until compelling new evidence is provided which would address concerns about the prediction and management of induced seismicity. A Written Ministerial Statement of 4 November 2019, accompanying the introduction of the moratorium, emphasised the Government's view that natural gas remains an

important source of secure and affordable energy and that shale gas has a potential role in this. As the Joint Plan is intended to cover the period to 2030, the Authorities take the view that it is important to maintain local policy for shale gas development, so as to ensure that policy coverage is in place should the moratorium be lifted, but it will be necessary to keep under review both the need for, and scope of, these policies as explained in more detail in para 4.11.

16. Main modification MM36 (Paragraph 5.106) also reflects new evidence, reflecting the Ministerial Statements on Energy Policy. In September 2015, a Written Ministerial Statement by Government indicated that there is a national need to explore and develop shale gas in a safe, sustainable and timely way. A further Ministerial Statement on Energy Policy, published in May 2018, reaffirmed Government's view on the national importance of shale gas and their support for the principle of shale gas development, and signalled an intention to create the world's most environmentally robust onshore shale gas sector. Government subsequently advised, in a further Written Ministerial Statement of May 2019, that policy for onshore oil and gas, including references to the local and national importance of unconventional oil and gas and the need to give weight to the benefits of minerals extraction, contained in the Statements of September 2015 and May 2018, remain extant. A Written Ministerial Statement in November 2019 reiterated the Government's view that natural gas remains an important source of secure and affordable energy and that shale gas has a potential role in this.
17. New text is proposed after Paragraph 5.106 (MM37) to reflect the High Court judgment and the quashing and subsequent removal of NPPF paragraph 209a. National planning policy for shale gas has continued to evolve during the later stages of preparation of the Plan. NPPF 2018 paragraph 209a indicated that MPAs should recognise the benefits of onshore oil and gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting a transition to a low carbon economy; and put in place policies to facilitate their extraction. This paragraph was subsequently quashed following legal proceedings. A High Court judgment leading to the quashing of NPPF 209a made reference to the failure by Government to consider the implications of evidence produced in objection to the proposed policy, which contended that the evidence on greenhouse gas emissions from shale gas development relied upon to support the policy was flawed. The Joint Authorities take the view that the evolving national policy position and the evolving evidential basis for the claimed carbon benefits of shale gas development, justify a precautionary approach to

relevant local planning policies for this form of development, and reinforce the justification for their commitment to keep this matter under close review, as referenced in paragraphs 4.10 and 4.11 of the Joint Plan.

18. Further significant developments in the wider regulatory context to shale gas development took place in November 2019, with the announcement by Government of a presumption against the issuing of any further hydraulic fracturing consents, until compelling new evidence is provided which would address concerns around the prediction and management of induced seismicity (as highlighted in Main Modification MM42). Nevertheless, as explained above an Energy Update Written Statement of 4 November 2019, accompanying the introduction of the moratorium, emphasised the Government's view that natural gas remains an important source of secure and affordable energy and that shale gas has a potential role in this. This is set out as Main Modification MM38.
19. Additional clarity has been made to Policy M17 and the justification in paragraph 5.146 as set out in Main Modification MM53 and MM55 in relation to the 500m buffer for residential dwellings and other sensitive receptors. The wording now indicates that proposals for surface hydrocarbon development, particularly those involving hydraulic fracturing, within 500m of residential buildings and other sensitive receptors, will only be permitted following the particularly careful scrutiny of supporting information which robustly demonstrates how in site specific circumstances an unacceptable degree of adverse impact can be avoided.
20. An additional part to policy M17 has been added to provide reference to sustainable waste gas management in hydrocarbon development (Main Modification MM54). Part iv) of the policy reads: "*iv) Proposals should include measures appropriate and proportionate to the development to manage waste gas emissions, including the capture and use of the gas where practicable, to ensure there is not an unacceptable impact on local communities or public health and to make practical use of any waste gas available.*"
21. Additional text highlighted in Main modification MM56 reflects the greater risk of induced seismicity especially in relation to historical buildings. The text indicates at paragraph 5.148 that: "*A further specific consideration associated with hydraulic fracturing is the possibility of induced seismicity. This has the potential to impact local amenity adversely and can be a significant concern to local communities. Furthermore, the Joint Plan area*

contains a wide range of historically important buildings, which may be more vulnerable to damage from induced seismicity than more modern structures. Although evidence suggests that any earth tremors that could be induced are likely to be of very low magnitude, it will be important to ensure that development which could give rise to induced seismicity is located in areas of suitable geology. Government indicated in an Energy Update Written Statement in November 2019 that the causes of seismicity are highly dependent on local geology and that the limitations of current scientific evidence means it is difficult to predict the probability and maximum magnitude of any seismic events. Proposals should therefore be supported by compelling evidence which demonstrates that induced seismicity can be managed and mitigated to an acceptable level. This should include information which demonstrates the known location of any faults, including any information available as a result of former underground workings in the vicinity, and an assessment of the potential for induced seismicity to occur as a result of the proposed development.”

22. Additional clarity is included in Main Modification MM46, Paragraph 5.124 in relation to hydraulic fracturing volumes taking into account national policy guidance. The definition of hydraulic fracturing used in the Joint Plan is considered in relation to the Planning Practice Guidance definition in that it does not rely on a minimum volumetric threshold.

Climate Change

23. In response to matters discussed at the EiP hearings, the Authorities have put forward a number of main modifications which address matters relating to impacts on climate change as a result of hydrocarbon development. The Authorities consider that the evolving evidential basis for emissions from shale gas development and for the carbon benefits of shale gas as a transitional source of energy, highlighted by the judgment, and through the quashing of NPPF209a, enhances the justification for these modifications, which contribute to the precautionary approach being followed in the Joint Plan towards this form of development.
24. At Main Modification MM03, Paragraph 4.11 the Joint Authorities are proposing to add additional text and trigger point under 3rd bullet point to state that, *“There is also some uncertainty over the specific development ‘model’ that may be followed by industry in the UK with respect to shale gas, and how this might influence the scale and nature of planning impacts that could arise. Such impacts might include those affecting a localised area only, whereas other effects, particularly those relating to*

greenhouse gas emissions for example, could have wider implications in terms of climate change considerations.” The Joint Authorities are also proposing in Paragraph 4.11 that the MPAs will initiate a review of policies where this would be justified by significant new evidence emerging on relevant matters including: b) the environmental, economic, amenity or public health impacts of hydrocarbon development (including impacts from greenhouse gas emissions and on climate change, and as a result of induced seismicity). As stated in Main Modification MM51 in relation to Policy M17 the Joint Authorities are proposing to add a reference to climate change to part 2) i) of Policy M17 to read: *“Applications for appraisal and production activities should specifically address the potential for cumulative impacts of development upon climate change and, where appropriate, propose such mitigation and adaptation measures as may be available and are consistent with Policy D11 and the requirements of other relevant regulators.”*

25. Main Modification MM102 in relation to Policy D11 is proposed to be amended by the Joint Authorities to provide a link between climate change and hydrocarbons. The authorities are proposing to add additional text in final paragraph of Part 1 to Policy D11 to state that, *“Proposals for substantial new minerals extraction and for the large-scale treatment, recovery or disposal of waste, as well as for hydrocarbon development, should be accompanied by a climate change assessment, as appropriate, showing how the proposals have taken into account impacts from climate change and include appropriate mitigation and adaptation measures where necessary.”*

Green Belt and York’s Historic Character and Setting

26. To provide consistency with National policy the joint authorities are proposing through Main Modification MM97 that Part 2) of the Policy D05 is revised to in relation to Green Belt and York’s Historic Character to state that:

“Proposals for waste development that include the construction of new buildings in the Green Belt will be considered inappropriate.”

“Substantial weight will be given to any harm to the Green Belt very special circumstances, will need to be demonstrated by the applicant, in order to outweigh harm caused by inappropriateness, and any other harm.”

“Proposals for other forms of waste development which would result in an adverse impact on the openness of the Green Belt or on the purposes of including land within the Green Belt, including those elements which contribute to the historic character and setting of York, will only be permitted in very special circumstances, which must be demonstrated by the applicant, in which the harm is clearly outweighed by other considerations.”

Monitoring and Review

27. As part the precautionary approach, the Authorities have indicated their commitment to keep the hydrocarbons policies under close review and have identified a range of matters in the MWJP. This commitment reflects and responds to the prevailing uncertainty and to the evolving nature of the evidence base, and national policy position, relating to unconventional hydrocarbons in general and to shale gas in particular. This will allow the policies to be refined in the light of emerging evidence and practice to ensure that justified and effective policy coverage remains in place.
28. To provide clarity and to be in line with national legislation, Main Modification (MM02) (Para 4.10) proposes that the Minerals and Waste Joint Plan should be reviewed every 5 years from adoption as a minimum. It is possible that matters justifying a review may arise over a timeframe of less than five years.
29. Main Modification (MM03) (Paragraph 4.11) indicates that there are key policy areas addressed in the Joint Plan, identifiable at this stage, which could lead to a need for review. The Joint authorities are proposing to add additional text and trigger point under the 3rd bullet point to respond to new issues arising out of any further exploration activity for shale gas in the area. The MPAs will initiate a review of policies where this would be justified by significant new evidence emerging on relevant matters including:
 - a) the scale and distribution of proposals for commercial production that could come forward following further exploration and appraisal activity;
 - b) the environmental, economic, amenity or public health impacts of hydrocarbon development (including impacts from greenhouse gas emissions and on climate change, and as a result of induced seismicity);

- c) the award of any further Petroleum Exploration, Production and Development Licences in the Plan area or other significant regulatory changes relevant to the development of local planning policy.
- d) where the capacity and capability of existing treatment facilities to deal with waste water arisings may be significantly challenged.

Consultation

30. Commencement of production of the Minerals and Waste Joint Plan Started in 2013. There have been a number of stages in its development including:
- **First Consultation** – took place for 6 weeks: May 2013 – June 2013
 - **Issues and Options Consultation** – took place for 8 weeks from February to April 2014.
 - **Supplementary Sites Consultation** – took place for 8 weeks between January and March 2015
 - **Preferred Options Consultation** – took place for 8 weeks between November 2015 to January 2016.
 - **Publication Consultation:** took place for 6 weeks between November – December 2016
 - **Addendum of proposed changes:** took place for 8 weeks between July – September 2017
 - **Submission to the Secretary of State:** November 2017
 - **Examination Hearings:**
 - Opened on Tuesday 27 February 2018 and were held over the following three weeks (27 February to 23 March 2018).
 - An additional session was held on the 13 April 2018.
 - The inspector held a further additional session, relating to unconventional oil and gas on Thursday 24 and Friday 25 January 2019.

How to get involved in the Consultation

31. The current Main Modifications Consultation is an 8 week public consultation which started on Wednesday 21st July and will close at 5pm on Wednesday 15th September 2021.

Key documents and the response form are available for inspection online at www.northyorks.gov.uk/examination

32. Documents which are available to view are:
- Schedule of Main Modifications July 2021;
 - Schedule of Additional Changes July 2021;
 - Sustainability Appraisal Post Adoption Statement November 2020;
 - Habitat Regulations Assessment Addendum November 2019;
 - Appropriate Assessment of additional Joint Plan Sites added following MWJP Hearings November 2020;
 - SFRA Volume I, Data Review Document June 2018;
 - SFRA Volume II, Sequential Test Results June 2018;
 - Policies Map November 2020.
33. A poster explaining about the consultation and where the consultation documents can be viewed online will also be placed in all of the York Libraries. If a local library has computers, the public may also be able to access the consultation online via booking a computer.
34. A press release has also been placed in the Yorkshire Post, The Northern Echo and in the York Press, the consultation has also been advertised via social media. The consultation has involved the distribution of a letter and/ or email to all consultees on the three authorities Local Plan databases informing them of the consultation and where they can view the documents. This will bring the consultation to the attention of residents, developers, landowners, operators as well as statutory consultees and others.
35. Paper copies of the Minerals and Waste Joint Plan Main Modifications documents will be made available at all of the principal council offices including at City of York Council's West Offices by pre-booked appointment only (Wednesday 21st July – Wednesday 15th September 2021, 8:30am – 5pm Monday to Friday). Should someone wish to arrange an appointment, they will need to contact the City of York Forward Planning team directly on (01904 552255). Access to the documents will be in line the protocols in place for Covid 19, such as quarantine of documents after use.

36. Paper copies of the Minerals and Waste Joint Plan Main Modifications documents can also be viewed at NYCC and NYMNPA principal offices by pre-booked appointment only during the Main Modification Consultation period, at:

North Yorkshire County Council

North Yorkshire County Council, County Hall, Racecourse Lane, Northallerton, North Yorkshire DL7 8AH (appointments can be made via emailing: mwjointplan@northyorks.gov.uk or telephoning: (01609) 780780.

North York Moors National Park Authority

North York Moors National Park Authority, The Old Vicarage, Bondgate, Helmsley, York, North Yorkshire - YO62 5BP (appointments can be made by telephoning: (01439) 772700.

The pre-booked appointments are available Monday- Friday during normal office opening hours. Access to the documents will be in line the protocols in place for Covid 19, such as quarantine of documents after use.

37. Comment can be made as follows:

To make a representation on the Minerals and Waste Joint Plan, by sending comments:

- by email to: mwjointplan@northyorks.gov.uk or
- by post using the address below:

Minerals and Waste Joint Plan Team
Planning Services
North Yorkshire County Council
County Hall
Northallerton
DL7 8AH

Options

38. Main Modifications are changes that the Inspector deems necessary to make a Plan both sound and legally compliant. To not consult on the Main Modifications would fail to comply with the regulations governing Plan production and the Joint Plan would not be able to progress to

adoption. Failure to have an up to date Plan would put the Council at risk of Government intervention. This effectively means that there is no reasonable alternative course of action.

Analysis

39. Officers consider that the most appropriate option is for the Executive Member for Economy and Strategic Planning to endorse the Main Modifications set out in the report. The response reflects the policies set out in the Minerals and Waste Joint Plan and the additional evidence put forward through the examination relating specifically to the protection of York's Historic Character and setting and the 500m buffer zone around residential development and sensitive receptors. Additional references are also made to Climate Change. References to Green Belt and York's Historic Character and Setting are in line with national policy have also been added; and additional information has been made in relation to the review and monitoring of the Joint Plan.

Next Steps

40. The Main Modification Consultation is taking place for 8 weeks between Wednesday 21st July and 5pm on Wednesday 15th September 2021. This consultation is being conducted in line with the City of York Council's Statement of Community Involvement (SCI) as updated in 2020 to be in line with Covid 19 restrictions.
41. At the end of the Main Modifications Consultation, the representations received will be collated by the joint authorities and sent to the Inspector, Ms Ord, after which the authorities will await her Report. Following receipt of the Inspectors Final Report, the final stage will be acceptance of the report and adoption of the Joint Plan by the respective North Yorkshire County Council and City of York Council Full Council and by North York Moor National Park Authority. The City of York Council will also consider the Inspectors Final Report and Joint Plan adoption at Local Plan Working Group and Executive before Full Council.

Council Priorities

42. The Council Plan 2019-2023 identifies eight priorities, six of which are relevant to this work:
 - Good health and wellbeing;

- Well-paid and an inclusive economy;
- A greener and cleaner city;
- Creating homes and world-class infrastructure;
- Safe communities and culture for all; and
- An open and effective council.

Implications

43. The following implications have been assessed:

- **Financial** The overall costs in relation to the Joint Plan Examination and Main Modifications Consultation have been shared between North Yorkshire County Council, City of York Council and North York Moors National Park Authority. The City of York Council share has been approximately £31,000 to date. This has been funded from within CYC budgets over the period 2018/19 to 2021/22.
- **Human Resources (HR)** There are no HR implications
- **One Planet Council / Equalities** There are no equalities implications
- **Legal** The Council is required to produce a Minerals and Waste Plan (MWP) (a Development Plan Document (DPD)) as part of its statutory duty to prepare and keep up to date a Local Plan.

Section 15 of the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011) places a duty on local planning authorities to prepare and maintain a local development scheme; the documents of which are development plan documents.

Section 16 of the Planning and Compulsory Purchase Act 2004 (as amended) requires that the local planning authority prepare and maintain a scheme to be known as their Minerals and Waste Development Scheme, which will specify documents such as proposals and policies to guide minerals and waste related planning decisions to be produced for the area, including the MWJP.

The Planning and Compulsory Purchase Act (2004) and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) set out the statutory procedures for preparing planning policy documents. The Joint Plan has been prepared in line with these regulations, as well as the National Planning Policy Framework (NPPF) and Guidance on Local Plans.

- **Crime and Disorder** There are no crime and disorder implications
- **Information Technology (IT)** There are no IT implications

- **Property** There are no property implications
- **Other** None

Risk Management

43. In compliance with the Council's risk management strategy, the main risks associated are as follows:

- Risks arising from failure to comply with the laws and regulations relating to Planning and not exercising local control of developments.

Contact Details

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Policy

Report
Approved

Date 15.07.2021

Specialist Implications Officer(s)

Financial – Patrick Looker
Finance Manager

Legal – Heidi Lehane
Senior Solicitor

Wards Affected: List wards or tick box to indicate all

All

For further information please contact the author of the report

Background Papers:

Annexes

Annex A – Minerals and Waste Joint Plan Main Modifications Schedule

List of Abbreviations Used in this Report

CJEU	Court of Justice of the European Union
CYC	City of York Council
DPD	Development Plan Document
EiP	Examination in Public
HRA	Habitat Regulation Assessment
MPA	Minerals Planning Authority
MWJP	Minerals and Waste Joint Plan
NPPF	National Planning Policy Framework
NYCC	North Yorkshire County Council
NYMNPA	North York Moors National Park Authority
SA	Sustainability Appraisal
SFRA	Strategic Flood Risk Assessment
SCI	Statement of Community Involvement