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**REPORT TO:** COUNCIL

**DATE:** 6 JULY 2017

**REPORT OF THE:** MONITORING OFFICER  
ANTHONY WINSHIP

**TITLE OF REPORT:** OPTIONS FOR PRESENTING THE DISTRICT COUNCIL'S  
REPRESENTATIONS TO THE EXAMINATION IN PUBLIC -  
JOINT MINERALS AND WASTE PLAN

**WARDS AFFECTED:** ALL

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## **EXECUTIVE SUMMARY**

### **1.0 PURPOSE OF REPORT**

- 1.1 To consider the implications of the motion on notice submitted by Councillors Lindsay Burr and Paul Andrews.
- 1.2 An Examination in Public is to be held to consider the Submitted Joint Minerals and Waste Plan (JMWP). The District Council has submitted representations in relation to the proposed policies of the Publication version of the Joint Minerals and Waste Plan. A motion on notice submitted by Councillor Burr invites the District Council to make a decision on how to present the Council's representations at the Examination in Public.

### **2.0 RECOMMENDATIONS**

- 2.1 Receive the report.
- 2.2 Consider the motion on notice submitted by Councillors Burr and Andrews .

### **3.0 REASON FOR RECOMMENDATIONS**

- 3.1 To afford the District Council an opportunity of deciding which option it wishes to adopt for presenting the District Council's representations to the examination in public of the Joint Minerals and Waste Plan (JMWP). The District Council has already made representations at the appropriate stage in the production of the JMWP, and has identified its right to participate in the Examination in Public process. No further representations can now be made.
- 3.2 The submission of representations must be made at the Publication of the Plan. These representations are provided *verbatim* to the Inspector who is appointed by

the Secretary of State to examine the 'soundness' of the Plan. They provide the key frame of reference to arguments to be discussed within the Examination in Public.

#### **4.0 SIGNIFICANT RISKS**

- 4.1 It is important to note that written representations carry no less weight than those which are made verbally in the Examination in Public. This is because an Examination in Public is not an adversarial/ inquisitorial activity such as a planning appeal determined at a section 78 Public Inquiry. It is a robust discussion and debate around matters and issues which have already been identified by the Inspector as being necessary to discuss and debate in the hearing sessions. Those matters and issues are determined by the Inspector in advance of the Hearings, and are informed by the representations, and any evidence produced therein.
- 4.2 Participating in the Examination in Public allows the ability to respond to questions the Inspector may have, or matters raised by other participants in the debate. This can be important, and assist in the Inspector's deliberations. It does not, however, allow the ability to consider new evidence/arguments, unless the Inspector expressly requires it by the submitting authorities, and there will be the opportunity to comment on that material. This ensures that there is a timely management of the Examination in Public.

### **REPORT**

#### **5.0 BACKGROUND AND INTRODUCTION**

- 5.1 Ryedale District Council has made representations in respect of certain proposed policies of the consultation draft of the Joint Minerals and Waste Plan which has been prepared by North Yorkshire County Council (NYCC) , City of York Council and the North York Moors National Park.
- 5.2 The link to the District Council Officer report, supporting document and decision of the District Council's Planning Committee may be seen on the following link :
- (a) Item 111 on the agenda for the Planning Committee meeting on 20 December 2016 with supporting document and decision of the Planning Committee
- <http://democracy.ryedale.gov.uk/ieListDocuments.aspx?CId=117&MId=1684&Ver=4>
- (b) Report only to the Planning Committee meeting on 20 December 2016
- <http://democracy.ryedale.gov.uk/documents/s30889/1%20Part%20A%20Report%20-%20Minerals%20and%20Waste%20Joint%20Plan.pdf>
- 5.3 The current position on the progress of the Minerals and Waste Joint Plan is summarised below :
- The deadline for making responses to the Publication Stage has been confirmed by NYCC as 21st December 2016, and in line with national

guidance, representations received after that date have not been considered as duly made.

- The latest published timetable for production of the Plan was agreed in 2016 and that envisaged that Submission of the Plan to the Inspectorate will occur around the end of March 2017. This is now believed to be late Summer 2017. The Examination was anticipated to be held April – October 2017 with Adoption in November 2017.
- However, during the Publication period (which closed on 21st December 2016) nearly 1500 individual representations were received, many of which contain a large amount of information and detail.
- Work is taking place with the partner Authorities to look at these carefully before reporting back to their respective Members.
- NYCC had an initial target of making a report on 31st January 2017, however, given the large number of representations, it was not practicable to achieve that. Nonetheless, this work is proceeding as swiftly as possible and they expect to be in a position to make a report in the near future.
- The objective of the partner authorities remains to move to Submission as quickly as possible.

## 6.0 POLICY CONTEXT

6.1 The Examination in Public will consider the implications of the proposed policies in the Minerals and Waste Joint Plan in regards to the protection of the environment in terms of avoidance and mitigation on impacts on land stability, air, soil, water, biodiversity and geodiversity. It will also consider general amenity both visually within the landscape and in terms of disturbance. It will also consider wider economic considerations around the management of waste; and the extraction of geologically and geomorphologically-derived resources required for construction and for energy. It will assess the soundness of the approach taken through the following tests:

A **sound** document will be:

1. **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
2. **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
3. **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
4. **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the (Minerals and Waste Development) Framework.

6.2 The District Council's representations are intended to support the District Council's policies relating to the protection of the environment and rural landscape . In the District of Ryedale these are established in the adopted (2013) Ryedale Plan- Local Plan Strategy.

## 7.0 CONSULTATION

7.1 There has been consultation with neighbouring local authorities . Below is a table of the responses made to the JMWP by Adjacent Authorities. Please note that York City Council, North York Moors National Park and North Yorkshire County Council are the Minerals and Waste Authorities, and as such they are formulating the JMWP.

Authority	Contact	Did they make representations on the JMWP	Do any representations relate to Hydraulic Fracturing (Fracking)	Will they be represented/ or participate in the EiP in to the JMWP. Or rely on written representations
Scarborough BC	Mr Steve Wilson Steve.wilson@scarborough.gov.uk  Spoke with Peter Harrap (report writer)  01723 384406	yes	Yes: The Borough Council supports the Plan and the policies contained therein along with the Proposed allocations. It considers the Plan is Sound and legally compliant and the Borough Council confirms that the Duty to Cooperate has Been met with early and ongoing engagement With the Borough Council. b) The Borough Council notes the policies for hydraulic fracturing and considers them in accordance with national guidance. It would reserve the right to comment on Individual proposals should they arise.  c) (text not included as refers to	No, may observe

			waste)  see report page 446 of the PDF paragraphs- 5.12-5.18  <a href="http://www.northyorks.gov.uk/media/35876/Combined-responses--Part-1/pdf/Combined_responses_Part_1.pdf">http://www.northyorks.gov.uk/media/35876/Combined-responses--Part-1/pdf/Combined_responses_Part_1.pdf</a>	
Hambleton DC	Mrs Caroline Skelly Caroline.skelly@hambleton.gov.uk 01609 767150	Yes	No	No
East Riding of Yorkshire Council	Mr Jon Palmer Planning Policy Manager Jon.palmer@eastriding.gov.uk 01482 391732	No	NA	NA
Howardian Hills AONB	Paul Jackson Manager 01609 536778)	yes	1. In para 5.122 (and referenced in subsequent paragraphs) the MWJP refers to the “proposed” Surface Development Restriction regulation pertaining to fracking in wells drilled from the surface within Protected Areas. I’ve double-checked the Government response of July 2016 and it seems to confirm my previous understanding that the Surface Development Restriction provisions, including the Ministerial Policy Statement covering existing PEDL Licences, are now in place. Some updating of the text to reflect the current legislative and policy position would therefore seem to be required. 2. Between paras 9.21 and 9.22 it would aid consistency and support the policy provisions if the Purposes of AONB designation were included as a new paragraph, as the Purposes of National Park designation are detailed in Para 9.19. The full Purposes of AONB designation, as laid out in ‘ Areas of	Not identified as participating

			<p>Outstanding Natural Beauty: A Policy Statement, Countryside Commission, CCP 352, 1992' are as follows:</p> <ul style="list-style-type: none"> <li>•The primary purpose of designation is to conserve and enhance natural beauty.</li> <li>• In pursuing the primary purpose of designation, account should be taken of the needs of agriculture, forestry and other rural industries and of the economic and social needs of communities. Particular regard should be paid to promoting sustainable forms of social and economic development that in themselves conserve and enhance the environment.</li> <li>• Recreation is not an objective of designation, but the demand for recreation should be met so far as this is consistent with the conservation of natural beauty and the needs of agriculture, forestry and other uses.</li> </ul> <p>So as not to unwittingly undermine either the designation or the evidence for the policy provision, the Purposes should be included in full and not paraphrased or summarised</p>	
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## 8.0 REPORT DETAILS

### Options for the District Council to present its representations to the Examination in Public .

8.1 A Planning Inspector appointed by the Secretary of State will consider the proposed policies in the Minerals and Waste Joint Plan and the duly made consultation responses made at Publication. The motion on notice submitted by Councillor Burr is inviting the District Council to decide how it wishes to present its representations at the Examination in Public and to engage in any debates, particularly in respect to the area of Hydraulic Fracturing.

8.2 There are two options:

#### Option 1 – Rely solely on the submitted Written Representations made at the Publication Stage

- 8.3 Written representations are those which have been made as part of the Publication Plan. No further representations can now be made. Written representations will be considered by the Inspector. They are the key means of identifying concerns/matters to discuss in Examination in Public.
- 8.4 The District Council has also exercised its right to attend the Examination in Public and participate in the discussions around Hydraulic Fracturing. But can chose to decline to attend at any time.
- 8.5 This option has been met within existing resources. There will be no further opportunity to make written representations, unless there is consultation on Main Modifications to the Plan.

### **Option 2 –Participate in the Hearing Sessions at the Examination in Public**

- 8.6 . Option 2 provides the opportunity to respond to questions the Planning Inspector may have of the District Council, and those Authorities who have submitted the Joint Plan. The Inspector frames the hearing programme through what is known as 'matters and issues'.
- 8.7 The presentation of evidence to the Examination in Public will involve the appointment of specialist mineral consultants to articulate and present the Council's representations and at the Examination in Public
- 8.8 The duration of the Examination in Public is currently unclear. Were this option to be pursued, the Council's mineral planning consultant it is estimated would need to be present for approximately three days of the inquiry with expenses. The cost would increase if the Examination in Public required the mineral planning consultant to be in attendance for more than three days. It is also important to be aware that a large number of representations are around the matter of Hydraulic Fracturing, and so the discussions are potentially lengthy. However it should be noted that the District Council would only need the mineral planning consultants to make the District Council's case for (7) representations on the hydrocarbon policy. They would not need to represent the District Council in respect of the other District Council representations.

### **Mineral Planning Consultant - Experience, capability and capacity**

- 8.9 Members are advised that it has been very difficult to identify suitable mineral planning consultants with expertise in hydraulic fracturing (fracking) who may be qualified to represent the District Council at the forthcoming Examination in Public. The following three county councils have been involved in 'fracking' issues :
- (i) Lancashire;
  - (ii) Nottinghamshire.
  - (iii) West Sussex;
- 8.10 After some research Officers have identified a case where mineral planning consultants were appointed by an objector to 'fracking' . The consultants involved were Gordon Halliday or Mary Campbell of Stephenson-Halliday . Their website is as follows :

<http://www.stephenson-halliday.com/>

8.11 These mineral planning consultants also do work for the Planning Advisory Service and for the Local Government Association .

8.12 Enquiries have been made of Stephenson-Halliday about availability, cost and experience . Stephenson-Halliday are available to undertake the work if the District Council wished to appoint mineral planning consultants to represent the District Council at the forthcoming Examination in Public . Details about cost are in the cost implications part of the report.

8.13 In terms of experience, capability and capacity the mineral planning consultants have supplied the District Council with the following information :

*"Stephenson Halliday were commissioned by the Roseacre Awareness Group (RAG) in December 2015 to provide Planning and Landscape advice to the Group in relation to the planning applications for hydraulic fracturing and appeals lodged by Cuadrilla at Roseacre Wood in Lancashire. We provided Planning and Landscape expert witnesses to argue their case at the public inquiry. We also project managed the production of all proofs of evidence for RAG. The Planning Inspector recommended that the Appeal should be dismissed."*

8.14 What is not clear from this statement is how the Consultants would be able to articulate an argument which involves the principle of undertaking such activities in particular areas, i.e. in a policy principle - Development Plan production context, as the experience looked at a specific impact of a development on a particular area. This also in respect of the fact that this was a section 78 Public Inquiry, which is, as discussed earlier in the report, is a different form of scrutiny process with different means of evaluating the Plan. However the mineral planning consultants have extensive experience of mineral planning issues with expertise in the specialist area of hydraulic fracturing. Such issues would be covered in a scoping meeting with the mineral planning consultants should the District Council wish to appoint a mineral planning consultant

### **Likelihood of Success**

8.15 Officers are of the view that if the District Council occupies a position whereby it seeks to be opposed to the principle of Hydraulic Fracturing in the District, this outcome will not be successfully achieved through the EiP of the JMWP. National Planning Policy in Minerals Planning already establishes that, as a policy-principle, hydraulic fracturing is to be supported. A key tenet of 'soundness' is to be in accordance with National Policy. However, it is for the Joint Minerals and Waste Plan to give due weight to sensitivities within the Plan area and provide a suitably robust policy framework for the JMWP to assess, evaluate and attribute weight to impacts of the proposal on the environment in all aspects, and on communities, balanced with the contribution of the proposal to energy supply, energy security and the wider economic considerations. This will be tested in the EiP, and will be informed by the representations which have been made to date.

## Motion on Notice

8.14 At the Extraordinary Meeting on 18 May 2017 Councillor Clark asked the mover and the seconder the following questions and proposed that the questions be considered in an Officer report :

- Which consultants do the mover and seconder recommend?
- What experience / skills do they have?
- Estimate of cost?
- Estimate of success?
- What is the cut off amount?
- Why did the mover propose she would do this role if now she is calling for public money to do it?
- What discussions have there been with Scarborough Borough Council?
- What discussions have there been with East Riding of Yorkshire Council?

8.15 The response of the mover and seconder to the above questions is that they are content to rely on Council considering Officer advice on most of these issues .

## 9.0 IMPLICATIONS

9.1 The following implications have been identified:

a) Financial

The submission of written representations has already been undertaken by officers using existing resources. Further submissions could only be made if the Inspector is given the authority, by the submitting authorities, to consider Main Modifications to the Plan. Representations could be made to that, or representations made during the course of the hearings, if so required by the Inspector of the submission parties could be responded to.

The cost of the presentation of oral evidence to the Examination in Public will be a function of the consultants daily rates and the number of days required to undertake the task. This will include:

- Inception meeting
- Review of all relevant documentation
- Client liaison
- Preparation for EiP
- Attendance at the EiP

If it is assumed that attendance at the EIP is restricted to 3 days then a broad ball park estimate for the tasks identified above would be £10-12,000 plus VAT and expenses.

The estimate of £10-12,000 would increase further were the Examination in Public require attendance for more than three days . The Hourly rate for both Mary Campbell and Gordon Halliday is £110 (£825 per day). Members may apply a cap to such costs .

b) Legal

The purpose of the Examination in Public of the Joint Minerals and Waste Plan, which has been prepared by North Yorkshire County Council (NYCC), City of York Council and the North York Moors National Park, is to assess whether the Plan has been prepared in accordance with the duty to co-operate, legal and procedural requirements and whether it is sound (as set out in paragraph 182 of the National Planning Policy Framework (“NPPF”) and a local planning authority should only submit a plan which it considers sound.

The District Council needs to decide how it wishes to present its representations in the context of the Examination in Public process.

- c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder  
No direct Implications arising from the report

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**Background Papers:**

- (a) Item 111 on the agenda for the Planning Committee meeting on 20 December 2016 with supporting document and decision of the Planning Committee

<http://democracy.ryedale.gov.uk/ieListDocuments.aspx?CId=117&Mid=1684&Ver=4>

- (b) Report only to the Planning Committee meeting on 20 December 2016

<http://democracy.ryedale.gov.uk/documents/s30889/1%20Part%20A%20Report%20-%20Minerals%20and%20Waste%20Joint%20Plan.pdf>

(c) Representations viewable at page 160 onwards of  
[http://www.northyorks.gov.uk/media/35876/Combined-responses---Part-1/pdf/Combined\\_responses\\_Part\\_1.pdf](http://www.northyorks.gov.uk/media/35876/Combined-responses---Part-1/pdf/Combined_responses_Part_1.pdf)

**Background Papers are available for inspection at:**  
Web address

[www.ryedale.gov.uk](http://www.ryedale.gov.uk)