

Environment, Development and Transport Committee

Item No.

Report title:	Single Issue Silica Sand Review of the Minerals Site Specific Allocations Development Plan Document (DPD): Adoption
Date of meeting:	10 November 2017
Responsible Chief Officer:	Tom McCabe – Executive Director, Community and Environmental Services
Strategic impact Norfolk County Council, as Minerals Planning Authority, must plan for a steady and adequate supply of industrial minerals, in accordance with National Planning Policy. The Authority has a statutory duty to produce and maintain an up-to-date Minerals Plan which forms the basis for determining any relevant planning applications that are lodged with the authority. The purpose of the Single Issue Silica Sand Review of the adopted Minerals Site Specific Allocations DPD is to address the predicted shortfall in the quantity of silica sand extraction sites allocated in the Plan, by designating a specific site and areas of search which would be suitable to meet this shortfall. Silica sand is a nationally important industrial mineral used in the manufacture of glass.	

Executive summary

EDT Committee is asked to recommend Full Council to:

- 1. Note the content of the Inspector's report into the examination of the Single Issue Silica Sand Review (Appendix 1 to this report)**
- 2. Resolve to formally adopt the Single Issue Silica Sand Review, incorporating the Main Modifications and additional modifications (Appendix 2 to this report)**
- 3. Resolve to formally adopt the associated changes to the Revised Policies Map (Appendix 3 to this report)**
- 4. Note that on adoption the Single Issue Silica Sand Review will form part of the adopted Norfolk Minerals Site Specific Allocations DPD**

1. Proposal

- 1.1. The Inspector's Report into the examination of the Single Issue Silica Sand Review was received by the Council on 9 October 2017 (provided as Appendix 1 to this report). The Inspector's Report finds that the Silica Sand Review has been prepared in accordance with the Duty to Cooperate, and all legal and procedural requirements. The Inspector's Report also concludes that, with the recommended Main Modifications, the plan meets the criteria for 'soundness' in paragraph 182 of the National Planning Policy Framework (NPPF), namely that it is positively prepared, justified, effective and consistent with national policy.
- 1.2. The Inspector's report therefore recommends that the Silica Sand Review be adopted with his recommended Main Modifications. The Main Modifications are summarised in paragraph 2.3 of this report and detailed in Appendix 1. The Silica Sand Review, incorporating the Main Modifications and Additional Modifications, is Appendix 2 to this report. In order to bring the Silica Sand

Review into effect, it now has to be formally adopted by Full Council.

- 1.3. On adoption by full Council, the Silica Sand Review will form part of the adopted Norfolk Minerals Site Specific Allocations DPD. Adoption of the Silica Sand Review means that it becomes part of the development plan for the County and full weight can then be attached to it in the consideration of planning applications (as part of the plan-led system based on the most up-to-date plan).
- 1.4. The Inspector's report also advises that when the Silica Sand Review is adopted, in order to comply with the legislation and give effect to the Plan's policies, the Council will need to update the adopted 'Revised Policies Map' to reflect the new policies in the Silica Sand Review. The changes required to the Policies Map to reflect the policies in the Silica Sand Review are:
 - Include new inset maps of the four allocated areas of search (AOS E, AOS F, AOS I, AOS J) and specific site (SIL01) for silica sand extraction contained within the Single Issue Silica Sand Review

In addition, to keep the Policies Map up-to-date the following maps also need to be amended:

- Air Quality Management Areas, to reflect changes to designations within Breckland and Norwich City.
- Airport Safeguarding, to reflect revised maps provided by the Defence Infrastructure Organisation

Therefore these revisions to the Revised Policies Map (provided in Appendix 3) also need to be formally adopted by Full Council.

- 1.5. Once the Silica Sand Review has been adopted, as soon as is reasonably practicable the County Council must: make available the adopted plan, an adoption statement, the sustainability appraisal report, details of where the plan is available for inspection and the places and times at which the plan can be inspected, send a copy of the adoption statement to any person who has asked to be notified and to the Secretary of State. The adoption statement must include the date of adoption, specify the modifications and also give details of the statutory rights to challenge the adopted document.
- 1.6. **Consultation**

There are a number of organisations which Norfolk County Council is legally required to invite representations from, as part of the Local Plan process in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012. There are also a number of organisations which Norfolk County Council has a duty to cooperate with in the plan making process, in accordance with the Planning and Compulsory Purchase Act 2004 (as amended by Localism Act 2011). In accordance with the adopted Statement of Community Involvement, each stage in the Silica Sand Review process has been available to view on the Norfolk County Council website and available for inspection at the main office of each of Norfolk's local planning authorities and public libraries.
- 1.7. An Initial Consultation on the Silica Sand Review took place from 9 March to 20 April 2015. The Preferred Options Consultation took place from 6 November to 21 December 2015. The comments received in response to these consultation stages informed the Pre-Submission version of the Silica Sand Review.
- 1.8. The representations period on the Pre-Submission version of the Silica Sand Review took place from 16 May to 27 June 2016. The representations period on the Silica Sand Review 'Pre-Submission Addendum: Modifications' took place from 14 September to 27 October 2016. The representations received in response to both of these Pre-Submission documents were provided to the Planning Inspectorate when the Silica Sand Review was submitted for examination.

- 1.9. The hearing sessions for the examination of the Silica Sand Review took place on 14 and 15 March 2017. Following the hearing sessions, the Planning Inspector asked Norfolk County Council to publish a number of main modifications and additional modifications for representations to be made.
- 1.10. The representations period on the Main Modifications and Additional Modifications took place from 17 July to 1 September 2017. The responses received were provided to the Planning Inspector responsible for carrying out the examination of the Silica Sand Review.

2. Evidence

- 2.1. The Inspector's Report was received by the Council on 9 October 2017 (provided as Appendix 1 to this report). The Inspector's Report finds that the Silica Sand Review has been prepared in accordance with the Duty to Cooperate, and all legal and procedural requirements. The Inspector's Report also concludes that, with the recommended Main Modifications, the plan meets the criteria for 'soundness' in paragraph 182 of the National Planning Policy Framework (NPPF), namely that it is positively prepared, justified, effective and consistent with national policy.
- 2.2. The Inspector therefore recommended that the Silica Sand Review be adopted with his recommended main modifications.
- 2.3. The Main Modifications can be summarised as follows:
 - To update the calculations of the forecast need for silica sand.
 - Amending the Specific Site Allocation Policy SIL01 requirements regarding archaeological assessments, and to clarify that planning applications would need to comply with Policy DM15 on cumulative impacts.
 - The removal of Area of Search D (land in the vicinity of West Bilney Woods) from the Silica Sand Review
 - Amending the boundary of Areas of Search E to exclude the site of Fairstead Medieval Market.
 - Amending the supporting text for AOS E regarding: the historic environment, the need for a planning application within AOS E to have regard to the historic landscape character of the wider area, with specific regard to the medieval landscape, and to note that there is a public water main within AOS E.
 - Amend the supporting text for Area of Search F to refer to the presence of a public water main.
 - Amending the Areas of Search Policy requirements regarding archaeological assessments, and to clarify that planning applications would need to comply with Policy DM15 on cumulative impacts.
- 2.4. The two 'additional modifications' are: to update the Silica Sand Review in terms of the process undertaken to date and to correct paragraph E.7 regarding the status of the public access to Shouldham Warren. As the Inspector has recommended main modifications and concluded that the Review is sound if they are made, the Council can either adopt the Review with the Main Modifications, or adopt it with these modifications and also "additional modifications". These are modifications that the Council wishes to make which, when taken together, do not materially affect the policies set out in the Plan. That requirement would be met here, as the additional modifications amount only to factual updates and corrections.
- 2.5. Acceptance of all of the main modifications recommended by the Inspector in the

report (Appendix 1) is necessary to enable the adoption of the Silica Sand Review. The two additional modifications (Appendix 4), were published for six weeks, along with the main modifications to enable representations to be made. Whilst the Silica Sand Review would be sound without them, it would contain minor factual errors. Therefore the additional modifications have been included in the version of the Silica Sand Review recommended for adoption (Appendix 2 of this report).

- 2.6. Adoption of the Silica Sand Review means that it becomes part of the development plan for the County. This will be a significant advance to its status when planning applications are decided because the planning system is planned. Planning law (Section 38 (6) of the Planning and Compulsory Purchase Act 2004) requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Until adoption, the Silica Sand Review will not form part of the development plan, although significant weight can be attached to the Inspector's report as a material consideration.
- 2.7. Government policy contained in the National Planning Policy Framework states that 'plans should be kept up-to-date'. Prompt adoption of the Silica Sand Review will accord with the NPPF and therefore allow all current and future planning applications to be made on the basis of an up-to-date plan.
- 2.8. Adoption of the Silica Sand Review will provide more certainty for residents, operating companies and local authorities of the future location of silica sand extraction sites in Norfolk.

2.9. **Alternative Options**

The alternative options would be to either not adopt the Silica Sand Review, or to adopt the Silica Sand Review with the main modifications but without the additional modifications (the Council has this choice as explained at paragraph 2.4 above).

- 2.10. Not adopting the Silica Sand Review would result in insufficient silica sand sites and areas of search being allocated in the Minerals Site Specific Allocations DPD to meet the need set out in adopted Core Strategy Policy CS1. Insufficient allocated sites and areas of search could result in speculative silica sand planning applications being successfully made during the period until adoption of any new Local Plan. There would also be uncertainty over the location of future silica sand extraction for both the minerals industry and local communities which could lead to pressure to grant planning permission for extraction at less suitable sites due to the national importance of silica sand. Having selected the best options for allocations in the Silica Sand Review, through a process of assessment and comparison, will enable the Council to encourage development proposals in the most suitable locations.
- 2.11. Adopting the Silica Sand Review with the two additional modifications dismissed would result in a sound plan, but a plan which contains minor factual errors. The additional modifications would have no effect on Development Management decisions.
- 2.12. There appears to be no sound reasons for not adopting the Silica Sand Review as modified by the Inspector. The Review cannot be adopted within the Main Modifications recommended by the Inspector, as his conclusion was that the Review would be sound if, (but only if) the Main Modifications were made.

3. Financial Implications

- 3.1. The financial implications of adopting the Silica Sand Review are expected to be £2,500 for publication of the documents, public notices and postage, excluding the costs of officer time. These costs will be managed by the service.

4. Issues, risks and innovation

- 4.1. The production of a local plan is a statutory duty. Under the Council's constitution, formal adoption of the Silica Sand Review of the Minerals Site Specific Allocations DPD and the associated changes to the Policies Map are required to be approved by full Council.
- 4.2. The Silica Sand Review process must be carried out in accordance with the relevant planning legislation. The Inspector's Report has concluded that the process has been legally compliant.
- 4.3. The environmental implications of the Silica Sand Review have been formally assessed through the Sustainability Appraisal and the Habitats Regulations Assessment which must be carried out in accordance with the relevant legislation and include formal consultation stages. These documents were submitted to the Planning Inspector and formed part of the examination of the plan. The Inspector's report found them to be acceptable.
- 4.4. An Equality Impact Assessment of the Silica Sand Review has been carried out and no inequalities in outcomes have been identified.
- 4.5. Under Section 113 of the Planning and Compulsory Purchase Act 2004, the adoption of the Silica Sand Review of the Minerals Site Specific Allocations DPD can be legally challenged by any 'aggrieved person' on the grounds that either the document is not within the powers conferred by Part 2 of the 2004 Act or a procedural requirement has not been complied with. Any such challenge must be lodged with the High Court not later than six weeks after the adoption of the Silica Sand Review.
- 4.6. Following receipt of the Inspector's Report finding the Silica Sand Review legally compliant and 'sound', subject to the inclusion of main modifications, there are no grounds for believing that adopting the Silica Sand Review would be flawed. However, the launch of such a legal challenge cannot be ruled out as a possibility and if a legal challenge was made there would be a financial cost to defend such a challenge.
- 4.7. If the Silica Sand Review is adopted, regulation 26 of the Town and Country Planning (Local Planning) (England) Regulations 2012, will require the County Council to carry out specified notification and publicity requirements. These are summarised in paragraph 1.5 above.

5. Background

- 5.1. Norfolk County Council, as the Minerals Planning Authority, must plan for a steady and adequate supply of industrial minerals, in accordance with National Planning Policy (paragraph 146 of the NPPF). The Authority has a statutory duty to produce and maintain an up-to-date Minerals Plan which forms the basis for determining any planning applications for mineral extraction that are lodged with the Authority. The minerals plan consists of the adopted Core Strategy and Minerals and Waste Development Management Policies DPD and the adopted Minerals Site Specific Allocations DPD.
- 5.2. The Minerals Site Specific Allocations DPD, which was adopted in October 2013, contains a requirement imposed by the Secretary of State for a Silica Sand Review of the Plan to be completed by 2016. The purpose of the Silica Sand Review is to address the predicted shortfall, of 1.88 million tonnes, in the quantity of silica sand extraction sites allocated in the Plan, by designating a specific site and areas of search which would be suitable to meet this shortfall. It is expected that no more than two additional sites will be needed over the plan period (to 2026) to meet the shortfall. The Silica Sand Review will help ensure that attention is focused on suitable extraction areas within the silica sand

resource.

- 5.3. The Silica Sand Review of the adopted Minerals Site Specific Allocations DPD covers the period until the end of 2026 and allocates one specific site and four areas of search for silica sand extraction. The Silica Sand Review also contains policies detailing requirements that a planning applications for silica sand extraction, within the specific site or an area of search will need to address.
- 5.4. The specific site and defined areas of search covered a much larger area (967 hectares) than is required for silica sand extraction over the plan period to 2026 (approximately 40 hectares). This situation is to be expected due to the purpose and definition of areas of search. Areas of Search are defined in the National Planning Practice Guidance as “areas where knowledge of mineral resources may be less certain but within which planning permission may be granted, particularly if there is a potential shortfall in supply”. If it is not possible to designate Specific Sites, or Preferred Areas, the alternative way to plan for the steady and adequate supply of minerals is to designate Areas of Search.
- 5.5. The Silica Sand Review was submitted to the Secretary of State for examination in December 2016. As part of the examination process into the Single Issue Silica Sand Review, the Planning Inspector (Mr Jonathan Manning) held public hearing sessions on 14 and 15 March 2017 at The George Hotel, Swaffham. The main purpose of the hearings was for the Inspector to consider the ‘soundness’ and legal compliance of the submitted plan in the light of any representations made by parties objecting to the plan. The Inspector wrote to Norfolk County Council on 22 March 2017 and 14 June 2017 requesting a number of Main Modifications to be made to the Silica Sand Review.
- 5.6. Following the hearing sessions the Council published the ‘Main Modifications and Additional Modifications’ document for a six week representations period (17 July to 1 September 2017) to give all interested parties the opportunity to make representations on the proposed main and additional modifications to the plan before the Inspector completed his report.
- 5.7. Following the representations period on the proposed modifications, the Inspector considered all the representations received and provided his final Report to the Council on 9 October 2017 (Appendix 1 to this report).
- 5.8. Developers wanting to extract mineral from specific sites or land within an area of search allocated in the Minerals Site Specific Allocations DPD will still need to apply for and be granted planning permission before mineral extraction can take place. Applications will be assessed on their individual merits in the light of all relevant development plan policies and other material considerations. Planning permissions are often granted subject to conditions to mitigate potential adverse impacts from site operations and mineral extraction sites are monitored on a regular basis.

Appendix 1: Inspector’s final Report on the examination of the Norfolk Minerals Site Specific Allocations DPD: Single Issue Silica Sand Review and Main Modifications

Appendix 2: Adoption version of the Minerals Site Specific Allocations DPD: Single Issue Silica Sand Review

Appendix 3: Adoption version of changes to the Revised Policies Map

Appendix 4: Additional Modifications to the Single Issue Silica Sand Review

Officer Contact

If you have any questions about matters contained in this paper or want to see copies of any assessments, eg equality impact assessment, please get in touch with:

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