

Report to: **Cabinet**  
 Date: **15 November 2005**  
 By: **Director of Transport and Environment**  
 Title of report: **East Sussex and Brighton & Hove Waste Local Plan**  
 Purpose of report: **To inform Cabinet of the nature of the representations received on the joint Councils' response to the Planning Inspector's Report and Proposed Modifications to the Waste Local Plan, and to advise Cabinet to recommend the Council should move to adopt the plan.**

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## RECOMMENDATIONS

The Cabinet is recommended to recommend the County Council to:

1. agree the responses to the representations made on the Councils' Response to the June 2004 Inspector's Report and Proposed Modifications to the Waste Local Plan (WLP) as set out in the separate 'Schedule of Proposed Councils' Responses';
  2. make no further material modifications to the East Sussex and Brighton & Hove Waste Local Plan as amended by the Schedule of Proposed Modifications agreed in December 2004 and January 2005 ("the WLP").
  3. advertise the Councils' intention formally to adopt the WLP in such form; and if following the advertisement of the notice the WLP is not called in or no direction issued by the Secretary of State during the 28 day period, to authorise the Director of Transport and Environment to advertise a notice of adoption of the WLP;
  4. authorise the Director of Transport and Environment to agree any further necessary non-material changes to the WLP, prior to its final publication, in consultation with the Lead Cabinet Member for Transport and Environment and in conjunction with Brighton & Hove City Council;
  5. agree to the revised timetable for adoption of the WLP; and
  6. note the need and commitment to commence work on the preparation of the Waste Development Framework.
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### 1. Financial Appraisal

1.1 The costs of preparing the Waste Local Plan (WLP) are already included in the Department's revenue budget as a specific allocation. Costs are shared on a two thirds (ESCC) /one third (Brighton & Hove CC) basis. This Council's budget provision for the WLP process is £137,600 in 2005/6. Subject to a decision to go to adoption and no challenges being made, expenditure should be contained within this sum.

### 2. Supporting Information

#### Introduction

2.1 On 10 February 2005, the Councils published a response to the recommendations contained in the WLP Public Inquiry Planning Inspector's Report for a statutory six-week period of consultation. 8,429 representations were received.

2.2 A considerable number of representations were in the form of standard letters with at least ten different forms. Summaries of the representations were published in August 2005 although there is no statutory requirement to do this.

#### Representations on the Councils' Response to the Inspector's Report

2.3 The majority of the representations received were objections relating to the Councils' rejections of the Inspector's recommendations to: widen out the waste uses at sites in the WLP; safeguard additional locations for facilities, and; increase recycling and recovery targets.

2.4 175 representations of support were received, which related mainly to the Councils' deletion of Mountfield Mine from the Plan as a potential location for the development of Energy from Waste, Materials Recovery and Waste Transfer Facilities.

2.5 The nature of the main objections and the Councils' proposed response to them is set out in Appendix 1. All the objections received and the proposed Councils' responses are set out

in a separate schedule available for inspection in the Members' Room. In addition, the schedule is available for public view at County Hall and on the Council's website. The Councils' proposed response does not identify the need for any new formal modifications to the WLP. It is not therefore necessary to consider any further Public Inquiry. The next stage is for full Council to consider Cabinet's advice and if it is decided together with Brighton & Hove City Council to move to adopt the plan then the Councils will advertise a notice setting out their intention to adopt the WLP as set out in paragraph 3.1 below.

#### Changes to National and Regional Policy on Waste Planning

2.6 Recently, there have been two key developments in national and regional policy on waste planning, which need consideration and these are outlined in Appendix 2. At this late stage it is not proposed to modify the WLP to reflect these changes, instead appropriate references to them will be included as 'statements of fact' in the WLP's text. The Councils are committed to review of the WLP (see paragraph 2.10), via the production of a new Waste Development Framework (WDF), and this will consider any changes to national and regional policy.

#### Adoption

2.7 If the Councils agree to move to adopt the plan, they will publish a notice of their intention to adopt the WLP, with adoption being after the expiration of a period of 28 days. This period is to give time for the Secretary of State to call in the WLP or issue a direction. In doing so, the Secretary of State would either direct the Councils to modify the Plan or hold a further Public Inquiry. After the expiration of the notice period and assuming there has been no call-in, the Councils will then advertise a notice of formal adoption of the WLP. There then follows a six-week period during which High Court legal challenges to the Plan may be made.

#### Further Non-material Changes to the Plan

2.8 Non-material changes to the WLP may be necessary prior to its final publication and it is proposed that agreement on these be delegated to the Director of Transport and Environment, in consultation with the Lead Cabinet Member and Brighton & Hove City Council. Such changes include updating references to government policy and legislation, renumbering of paragraphs and pages and minor editorial corrections.

#### Timetable

2.9 The timetable for formal adoption of the WLP is set out in Appendix 3.

#### Waste Development Framework

2.10 Once prepared a joint WDF will replace the WLP. Separate reports regarding the preparation of the WDF will be submitted to Members in due course.

### **3. Conclusions and Recommendations**

3.1 After consideration of objections to the Councils' response to the Inspector's report and Proposed Modifications to the Plan, it is not considered any new issues have been raised and, therefore, it is not proposed that further modifications be made to the Plan, or that a second Public Inquiry be held. The Plan, once adopted, will provide a robust policy framework which will aid the Council in making sound decisions on planning applications for waste management facilities. However, a WDF will need to be prepared following adoption of the WLP, to address issues raised by the WLP Inspector and changes in national and regional policy. The Councils have already agreed to this course of action.

BOB WILKINS - Director of Transport and Environment

08 November 2005 C15 November – WLP Representations

Contact Officer: Tony Cook Tel. No.01273 481653

Local Members: All

#### **BACKGROUND DOCUMENTS**

1. East Sussex and Brighton & Hove Waste Local Plan Inspector's Report, June 2004.
2. Schedule of Representations (Representations received on the Councils' Response to the Inspector's Report, Recommendations and Proposed Modifications to the Waste Local Plan), August 2005.

## Outline of Nature of Main Representations and Councils Proposed Response

Please note this summary is only intended to provide an outline of the nature of the main representations received and the Councils' proposed response. Full summaries of representations and the Councils' responses to them are set out in separate schedules which have been placed in the Members' Rooms for inspection.

<b>Summary of Representation</b>	<b>Proposed Councils' Response</b>
<p><b>Recycling and Recovery Targets</b></p> <p>The Plan's recycling and recovery targets are too low – object to Councils' rejection of Inspector's recommendation to increase the Plan's targets.</p>	<p>The targets set by the plan already exceed the government's current targets and reflect what could be practically achieved. If subsequently higher targets are approved in alterations to the Regional Spatial Strategy (RSS) then the implications of these targets will be considered in the review of the Waste Local Plan undertaken as part of the preparation of the Waste Development Framework.</p>
<p><b>Lack of a strategic facility in the east of the County</b></p> <p>By deleting Mountfield as an allocation for an Energy from Waste Facility and rejecting a wider range of uses at Pebsham, all waste will be managed at an incinerator in Newhaven. This contravenes the proximity principle and will result in increased transport of waste and emissions associated with additional traffic.</p>	<p>Any proposals for an Energy from Waste (EfW) facility to serve the east of the County, would be considered on the basis of the development control policies in the Plan, especially WLP 19. WLP19 includes a requirement that 'proposals shall be well related to major sources of waste'.</p> <p>The site at Pebsham has not been fully assessed for the additional waste uses put forward by the Inspector nor has there been consultation on any additional uses (apart from material recovery/waste transfer), therefore it is considered that it would be inappropriate to identify the site as being suitable for these uses at this stage.</p> <p>Following the change to the planning system, these matters will be considered via the preparation of a new Waste Development Framework. New uses on existing sites and/or the development of new sites are not precluded because the Plan allows for them to come forward via the development control process and be determined in relation to the other waste policies in the Plan.</p> <p>Not all waste will be treated by any plant proposed for Newhaven. The Plan is not specific concerning the destination of any waste. The location and type of any waste treatment facility will depend on the type, quantity and source of the waste to be managed.</p> <p>The location of North Quay Newhaven would be suitable for rail or water transfer of waste or onward transfer of recyclates, subject to the mineral rail link being reconnected and/or the site selected having access to the wharf.</p> <p>The Plan advocates the proximity principle of dealing with waste as close to the source as practicable. Practical application of the proximity principle is dependant on factors such as environmental constraints and whether sites have been fully assessed for the proposed use.</p> <p>It is Plan policy that rail or water transfer of waste should be</p>

Summary of Representation	Proposed Councils' Response
	utilised where possible and practicable therefore limiting the number and length of road journeys, as set out in Plan policies WLP2 and WLP4.
<p><b>Alternative Sites and Technologies</b></p> <p>Objections to the Councils' rejection of the Inspector's recommendations to safeguard additional sites in the Plan and incorporate additional forms of waste management at sites already identified in the Plan. These should be included to increase the Plan's flexibility. Considered that there are 'more environmentally friendly ways', such as Mechanical Biological Treatment, of managing waste.</p>	<p>The Inspector recommended that uses on sites allocated in the Plan should be widened out to include a range of waste management uses and that new sites should be identified and safeguarded. Where sites have not been fully assessed or where there has not been adequate consultation on any additional uses, it is considered that it would not be appropriate to include them at this stage in the Waste Local Plan.</p> <p>Following the change to the planning system, these matters will be considered via the preparation of a new Waste Development Framework. New sites and uses are not precluded because the Plan allows for them to come forward via the development control process and be determined in relation to the other waste policies in the Plan. Any new sites proposed for allocation in a Waste Development Framework would have to undergo 'Sustainability Appraisal' and 'Strategic Environmental Assessment' requirements under new planning legislation.</p> <p>The setting of higher targets by the EU, the government and the Regional Spatial Strategy provide the incentive for waste treatment higher up the hierarchy. The Waste Local Plan has limited powers but its role is to facilitate the implementation of policy by providing sites or setting out the criteria by which sites for the treatment of waste can come forward.</p> <p>Councils have accepted Inspector's text further explaining advantages of Mechanical Biological Treatment (MBT) plants and their flexibility of format. WLP13 states that provision of mechanical-biological facilities is permitted subject to other policies of the Plan. MBT improves the efficiency of a facility in reducing the amount of residual waste, accordingly such facilities will be encouraged, subject to the same locational criteria as Materials Recovery Facilities (MRFs).</p>
<p><b>Incineration</b></p> <p>Objections to inclusion of incineration as a method of waste management.</p> <p>More specific objections to Councils 'ignoring point in para 36.29 of Inspector's report - if Plan were robust incineration wouldn't be necessary'.</p>	<p>The Inspector did not accept that incineration should be banned. He considered that the Plan should set criteria against which proposals for incineration or alternative types of thermal treatment should be determined. The Plan neither recommends nor excludes 'incineration' as a final treatment option (after the removal of recyclates) but refers to 'energy from waste' which can involve different technologies: including anaerobic digestion as well as thermal treatments such as gasification, pyrolysis or incineration.</p> <p>The Inspector did not ban incineration. In paragraph 36.29 the Inspector states:  <i>'To be robust, the Plan must allow for a situation where acceptable proposals for incinerators may not come forward.'</i>  but this is in the context of the Inspector's recommendation that under policy WLP19, sites should be referred to more generally as being suitable for 'thermal treatment', rather than specifically for 'incineration' which is only one form of possible thermal</p>

Summary of Representation	Proposed Councils' Response
	<p>treatment available.</p> <p>The Inspector's recommended text for WLP19 was largely accepted (deleting 'incinerators and thermal treatment' for 'EfW') where proposals for EfW will be permitted, subject to other relevant policies in the Plan, where a need is demonstrated which cannot practically be met by waste management methods higher up the waste hierarchy.</p> <p>Policy WLP19 requires proposals for Energy from Waste to include an assessment of the environmental and health impacts and to demonstrate that the development will not materially endanger human health or harm the environment.</p>
<p><b>Ashdown Brickworks</b></p> <p>Objection to landfill at Ashdown Brickworks and suggestion in Plan that landfilling could commence from 2008/9. Concerns with access and general environmental impacts.</p>	<p>The Inspector did not recommend that Ashdown Brickworks be deleted from the Plan as a site which may be suitable for landfill of waste.</p> <p>The Inspector recommended that Ashdown Brickworks has the potential to accept an infill of up to 100,000 tonnes per year before the Bexhill to Hastings Link Road is constructed, provided there is a new access road from the A269 and agreed lorry routeing to avoid Sidley district shopping centre.</p> <p>Pollution control is the primary responsibility of the Environment Agency. Ameliorating the impact of development that falls within the scope of the Waste Local Plan, is addressed by the development control policies in the Plan.</p>
<p><b>Best Practicable Environmental Option</b></p> <p>The modified Plan requires Sustainability Assessment to show it represents the Best Practicable Environmental Option</p>	<p>BPEO was a key principle in the Plan and reflected government guidance set out in PPG10. The Councils carried out a BPEO assessment for the WLP Inquiry. However, government policy was revised in July 2005 such that BPEO assessment is no longer required. PPS10 requires sustainability Appraisal to be applied so as to shape planning strategies. The government considers this form of assessment covers the aims of BPEO. As soon as this Plan is adopted, work will begin on the replacement Waste Development Framework, which requires sustainability appraisal at every stage.</p>
<p><b>General Process</b></p> <p>Objections which make the general point that the Councils have not accepted all the Inspector's recommendations</p>	<p>Under the planning regulations being used to undertake the Local Plan process, the Inspector's role is to make recommendations which the Councils are not obliged to accept or reject. In this case the Councils have accepted the majority of the Inspector's recommendations and given reasons where they have been rejected.</p>

## Changes to National and Regional Policy on Waste Planning

There have been two key developments in national and regional policy on waste planning, and these are outlined below.

- (i) In July, publication of National Planning Policy Statement 10 (PPS10) - 'Planning for Sustainable Waste Management'. Amongst other things, PPS10 replaces 'Best Practicable Environmental Option' (BPEO), as a principle of decision-making concerning the development of waste management facilities, with the requirement for Sustainability Appraisal. The BPEO principle is currently reflected in the WLP's Strategy. In order to ensure that planning applications for waste facilities include a full assessment of alternative options and their impacts, it is proposed to retain this principle until the Plan is reviewed via the preparation of a new Waste Development Framework ("WDF"), with a Sustainability Appraisal.
- (ii) In August, publication of the Government's proposed changes to Regional Planning Guidance for the South East ('RPG9') concerning waste. The changes to the partial review of RPG9, concerning waste, retain regional waste recycling and recovery targets that exceed those in the WLP. The WLP Inspector had, in part, used the higher targets in the original draft Regional Waste Management Strategy to justify his recommendation for increases in the WLP's targets. These recommendations were originally reviewed by independent consultants. In light of the developments with RPG9, the same consultants have now revisited their original report and concluded that their original suggestion, that it would be premature for the Councils to make modifications to the Plan's recycling and recovery targets, is still valid. The foreword to the updated report is included as Annex A below. Copies of the updated report are available in the Members' Rooms and on the Council's website.

## ANNEX A TO APPENDIX 2

### Foreword to Revised Independent Consultant's Report – 'Review of the Practicability of Targets in the Inspector's Report on the Inquiry into the East Sussex and Brighton and Hove Waste Local Plan'

#### **Foreword to Report**

*"This report on the review of the practicability of targets was originally produced by ERM in January 2005<sup>(1)</sup>. This report highlighted the current fluid nature of waste policy especially in relation to the level and definitions of targets. Since the original report was produced, the Government has published changes to the waste management decision making principles in Waste Strategy 2000 but has not yet announced any revised targets. In addition, the Government has published for public comment proposed changes to Regional Planning Guidance – RPG9 – Waste and Minerals following an Examination in Public. The final version of this document is likely to be adopted some time in 2006.*

*In light of these developments, ERM have now reviewed and updated the original report to reflect this situation. As part of this review, ERM have considered the original conclusions and recommendations made to East Sussex County Council & Brighton and Hove City Council. ERM are content that all of the original conclusions are still valid."*

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(1) Review of The Practicability of Targets in the Inspector's Report on the Inquiry into the East Sussex and Brighton & Hove Waste Local Plan. Produced by ERM, January 2005.

**Waste Local Plan Timetable**

Members of both Councils consider representations received on the joint Councils' response to the Planning Inspector's report on the Waste Local Plan and their response including decision to adopt Plan.	B&HCC Policy and Resources Committee – 9 November 2005 ESCC Cabinet – 15 November 2005 B&HCC Full Council – 24 November 2005 ESCC Full Council – 6 December 2005
Councils give statutory 28 days notice of intention to adopt Plan.	Mid December 2005 to mid-January 2006
Notice of adoption.	End January 2006