

SOUTH LAKELAND DISTRICT COUNCIL

Cabinet

Date of Meeting: 5th December 2007 Part I
Portfolio Holder: Councillor Brenda Gray Agenda
Report From: Director of Customer Services Item No:
Report Author: Réa Psillidou – Development Plans Manager
Report Title: Cumbria Joint Wind Energy Supplementary Planning Document (SPD)

Summary

Cabinet adopted the Cumbria Joint Wind Energy SPD at its meeting on August 15th, 2007. In October Cumbria County Council advised that in reporting on the representations received they omitted one representation. This situation is procedurally incorrect and could leave the Council open to challenge. This report seeks to rescind the earlier decision with regards to the adoption of the Cumbria Wind Energy Supplementary Planning Document and the approval of the Schedule of Responses and Proposed Changes. The approval of the Sustainability Appraisal Report and the Habitats Regulations Assessment Report as attached to the 15th of August Cabinet report remains.

Copies of the Cumbria Joint Wind Energy SPD as revised since August to incorporate changes arising from the missing representation and other minor amendments as agreed under delegated authority as well as the revised Schedule of Responses and Proposed Changes to incorporate the omitted representation are attached as Appendices. The Habitats Regulations Assessment and Sustainability Appraisal Report have not been changed. Copies of the documents are available are available for inspection in the Member's room.

Recommendations

It is recommended that members:

1. Rescind the decision of the 15th of August 2007 with regards to the adoption of the Cumbria Wind Energy Supplementary Planning Document and the approval of the Schedule of Responses and Proposed Changes.
2. Adopt the revised Cumbria Wind Energy SPD as attached to this report in Appendix 3.
3. Approve the revised Schedule of Responses and Proposed Changes (Appendix 4);
4. Approve an amendment to the 'Introduction' replacing paragraph 1.18 with the text in Appendix 6
5. Agree that the Head of Housing and Regeneration, in consultation with the Housing and Development Portfolio Holder any further minor amendments that improve the clarity of the document without altering the substance.

Report

This is attached at Appendix 1 and 2.

Alternative Options

Not to agree to rescind the decision taken on the 15th of August. This will leave the Council open to challenge through judicial review since all representations received must be reported and are material to the decision. It would not be appropriate to just amend the Responses and Proposed

Changes Report before final publication to incorporate the omitted representation. This would be outside the delegated authority the Cabinet agreed at its meeting on the 15th of August 2007.

Not to agree to adopt the Cumbria Wind Energy Supplementary Planning Document or to ask for major revisions to the supplementary guidance. This will cause further delay in having an adopted document as set out in the Local Development Scheme. It would further result in failure to produce a consistent approach to wind energy development across the county.

Key Decision

This report relate to Key Decision KD07/019/H&D

Material Considerations

Not applicable

Finance

Financial implications may arise if the 15th of August 2007 decision is not rescinded and that decision is challenged through the Judicial Review process.

Risk

Risk	Consequence	Controls required
This report does not present any risk		

Staffing

This report has no staffing implications

Sustainability

The Wind Energy Supplementary Planning Document was subject to a Sustainability Appraisal, which concluded that the SPD performs well against landscape and visual impacts but less well against sustainability objectives relating to the water environment, biodiversity, soil quality, sustainable use of resources, waste management and social issues.

The final document has been strengthened in relation to these issues though the SPD retains a focus on landscape and visual issues. This is considered acceptable as guidance on other issues is already widely available, whereas guidance on landscape and visual issues, despite being a key element of decision-making for wind energy development, is not.

Links to Corporate Plan

This proposal directly contributes to the achievement of the following specific targets in the Corporate Plan:

- The Local Development Framework (produced in accordance with the timescales in the approved Local Development Scheme of April 2007) adopted by 28th February 2010 (Priority 12)
- Sustainable use of resources (including land use, water, minerals, forestry and energy) to reduce the impact of climate change on the environment (Priority 13)

This proposal directly contributes to the following corporate values identified in the Corporate Plan:

- Providing efficient, value for money services
- Working in partnership

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- Communicating and engaging effectively
- Acting as an advocate for the needs of South Lakeland

Links to Other Strategic Plan(s)

South Lakeland Local Plan 2006

The Community Strategy for South Lakeland 2004-2024

Draft Sustainable Community Strategy for South Lakeland 2007-2027

Cumbria and the Lake District Joint Structure Plan 2001-2016

Draft Regional Spatial Strategy for the North West March 2006

Equalities & Diversity

This proposal does not have any equalities and diversity implications

Community Safety

This proposal does not have any community safety implications

Background Documents

Document: 15th August 2007 Cabinet Report on Cumbria Wind Energy SPD – Adoption Contact: Réa Psillidou – Development Plans Manager

Cumbria Joint Wind Energy SPD Sustainability Appraisal Report and Habitats Regulations Assessment Report

South Lakeland Local Plan and Alteration

Cumbria and Lake District Joint Structure Plan 2001-2016

Draft Regional Spatial Strategy for the North West, March 2006

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APPENDIX 1

Committee: Cabinet
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Report

Introduction

- 1.1 On the 15th of August 2007 the Cabinet resolved to adopt the Cumbria Wind Energy Supplementary Planning Document following consultation in September 2006 on a draft document. As part of the process, Cabinet approved the Schedule of Responses and Proposed Changes, which set out a summary of all the representations received and a response to the points raised.
- 1.2 The SPD has been prepared in partnership with Allerdale Borough Council, Carlisle City Council, Copeland Borough Council, Eden District Council, the Lake District National Park Authority and Cumbria County Council. Cumbria County Council was the lead authority and was responsible for drafting all documents. Early in November Cumbria County Council advised that a representation was omitted from the Schedule of Responses and Proposed Changes.
- 1.3 All representations received are material to the Cabinet's decision to adopt the SPD. Therefore due to this omission the adoption of the SPD has been procedurally incorrect and consequently open to challenge through the Judicial Review process. It is therefore recommended that Cabinet rescind the decision taken on the 15th August 2007 to adopt the Cumbria Wind Energy Supplementary Planning Document and to approve the Schedule of Responses and Proposed Changes and reconsider the matter anew taking into account the revised Schedule of Responses and Proposed Changes.
- 1.4 The approval of the Sustainability Appraisal Report and the Habitats Regulations Assessment Report as attached to the 15th of August Cabinet report remains. Both reports and their conclusions are not affected by the omission in the Schedule of Responses and Proposed Changes.
- 1.5 The report attached in Appendix 2 provides an analysis of the representations received and the proposed changes to the SPD. The proposed changes arising from all the representations received are set out in full in the amended Schedule of Responses and Proposed Changes (attached as Appendix 4). A schedule of minor amendments proposed by officers to improve the clarity of the document is attached in Appendix 5. Due to the size

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of appendices 3 (Cumbria Wind Energy Supplementary Planning Document), 4 (Schedule of Responses and Proposed Changes) and 5 (Schedule of Proposed Minor Changes), these are provided on disc.

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APPENDIX 2

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Report Title: Cumbria Joint Wind Energy Supplementary Planning Document (SPD)

Introduction

1. In September 2006, SLDC approved the consultation draft of Cumbria Wind Energy Supplementary Planning Document (WESPD) for the purpose of formal public consultation. The document has been amended in the light of representations received during the consultation and is now ready to proceed to adoption.
2. The document has been developed in partnership with Allerdale Borough Council, Carlisle City Council, Copeland Borough Council, Eden District Council, the Lake District National Park Authority and Cumbria County Council. The document is included in each local authority's Local Development Scheme and if adopted will form part of each Local Development Framework. The WESPD will replace 'Wind Energy in Cumbria, A Statement of Supplementary Planning Guidance', which was produced in 1997 by Cumbria County Council in partnership with the Cumbrian local planning authorities.
3. Although Barrow Borough Council supports the production of the WESPD, it was not in a position to progress the WESPD to adoption, however it will do so at a later date. In the meantime, once adopted by Cumbria County Council, the WESPD will become a material consideration for any wind energy schemes that come forward in Barrow Borough.
4. The production and adoption of the WESPD accords with targets in the Government's Energy White Paper to provide 20% of the UK's energy from renewable energy sources by 2020. It seeks to ensure that future wind energy development in Cumbria supports this goal for renewable energy without causing significant harm to a range of issues including biodiversity, cultural heritage, highways, landscape and visual effects, local amenity, local economy, soils, hydrology, aviation and telecommunications.

The Consultation Process

5. Consultation on the draft WESPD took place over a 6-week period from October 30 to December 8 2006. Comments were received from 149 organisations and individuals representing the local community, parish councils, local interest groups, the wind energy industry, professionals, local and regional government and organisations, and a range of environmental groups and organisations. Altogether 479 issues were raised, many in support and many seeking changes to the document. The Schedule of Responses and Proposed Changes can be found at Appendix 3.
6. The issues raised in the consultation covered many parts of the WESPD. Comments often raised opposing points of view about the same issue. The key issues are set out below.

Support for the document included:

- Support for the principle of the document.
- Support for the landscape and visual focus of the document.
- Support for the landscape capacity assessment.

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- Support for the principle of covering all planning issues rather than just landscape issues.

Challenges to the document included:

- Too little on other planning related issues – too landscape focussed.
 - Too little on other renewable energy sources.
 - Too little on the need for renewable energy development.
 - The document is too restrictive and is misleading and negative towards wind energy development.
 - The document will allow more wind energy development, which would be damaging to the area.
 - Some considered the landscape capacity findings too restrictive; others considered them not restrictive enough.
7. Many respondents offered suggestions on ways that the document could be changed. This was particularly the case with regard to text they considered would restrict or prevent future development, or conversely, that would allow development to go ahead that would cause harm.
8. A thorough analysis of the comments and a review of the document have been carried out. It has been ensured that changes accord with national, regional and local planning policy and take a balanced consideration of the comments received. This has resulted in a range of proposed changes. These are set out in full in the Schedule of Responses and Proposed Changes (attached at Appendix 3). The following section highlights the principal changes proposed.

Changes to the structure of the guidance

9. It is proposed to change the structure of the document in order to present guidance in a more balanced and less complex way. The consultation draft comprised three parts. Part 1 provided general guidance on preparing wind energy proposals and specific guidance on siting, design and cumulative effects for landscape and visual issues only, Part 2 provided details on the Landscape Capacity Assessment and Part 3 provided guidance on Landscape and Visual Impact Assessment.
10. The revised document now comprises only two parts. Part 1 sets the context in terms of the need for wind energy development and provides detailed guidance on the following planning related issues:
- | | |
|-------------------|---------------------|
| Aircraft | Local Amenity |
| Biodiversity | Local Economy |
| Community | Soils and Hydrology |
| Cultural Heritage | Telecommunications |
| Highways | |
11. In the consultation draft, Part 1 provided general information on the above issues and detailed information on landscape and visual effects. Consultation responses suggested that this gave the impression that greater weight would be attached to landscape and visual

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effects than to other planning issues when wind energy applications were being considered. That was not the intention and the structure of the document has been revised to address this issue.

12. Part 2 now contains detailed information on landscape and visual issues. This includes general guidance on design, siting and cumulative effects, the full landscape capacity assessment and guidance on carrying out a landscape and visual impact assessment for wind energy schemes. In the consultation draft, this information was included in Parts 1, 2 and 3. It is considered more appropriate to include detailed information in a dedicated section on landscape and visual issues as they continue to be important issues in terms of wind energy development. It is also important for the landscape capacity assessment to be included in the WESPD as this information will be important in guiding wind energy development to the most appropriate locations and is not available elsewhere.

Changes to the content of the guidance

13. Parts of the text of the WESPD have been changed to strengthen certain areas of guidance, delete negative or misleading references, clarify points, and make clear distinctions between relevant planning issues and non planning issues that might raise local concerns but would not be considered by the local planning authority.

In summary, the following changes have been made:

PART 1

Section 1 – The text that sets the context for the need for wind energy development and the national, regional and local planning framework has been strengthened.

Section 2 - A new section called ‘Guidelines for Wind Energy Development’ has been introduced to provide general guidance on the full range of issues that need to be considered. This includes clear guidance throughout on the need for developers to consider all the issues relevant to their site equally. It expands the text previously contained in the consultation draft. The issues covered are:

- Aircraft and radar – minor text changes
- Biodiversity – text amended to reflect the Habitats Regulations Assessment and information on species sensitivity.
- Community – text amended to reflect recent government backed guidelines on community engagement and benefits.
- Cultural Heritage – text strengthened to provide more information to developers to help assess the full range of cultural heritage issues.
- Highways – new text is added to reflect the need to consider highways effects throughout the lifetime of a project and along with details on rights of way.
- Local Amenity – text refers principally to noise issues and has been revised to accord with UK guidance and to recognise that careful design can help reduce any unacceptable noise levels.
- Local Economy – text amended to reflect that development could bring positive, neutral or negative effects to the local economy. It continues to recognise that Cumbria has a strong tourist economy and that this is linked to its high quality natural environment and cultural heritage. It seeks that assessments be carried out to determine any local economic benefits or disbenefits a scheme may bring.
- Soils and hydrology – minor text changes.

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- Telecommunications – minor text changes.

Section 3 – Specialised landscape and visual cumulative effects guidance has been moved to Part 2 and includes general guidance on the need to consider cumulative effects for any relevant planning issues.

Section 4 – Specialised landscape and visual effects guidance on siting and design has been moved to Part 2 and includes general guidance on site selection and design considerations. Text has been added to describe the components of a typical wind energy development. The relevant local policies that the WESPD supports have been reproduced in full. Maps 1 and 2 have been revised and additional maps showing the international wildlife sites have been included. These are appended to Part 1 of the WESPD. Maps 3 and 4 have been moved to Part 2 and have become Maps 7 and 8.

PART 2

Section 1 – Amend and move specialised guidance from Part 1 on landscape and visual effects including cumulative effects and siting and design.

Section 2 – Presentation of the findings of the Landscape Capacity Assessment has been amended. A full review of the landscape capacity methodology has been carried out in response to comments received during the consultation. This has resulted in confirmation that the overall methodology is sound and the findings do not need to substantially change. The main change is to landscape character type 9. This covers intermediate moorland and plateau landscapes. In the draft document this character type had an overall capacity rating of moderate - high. A review of the capacity for each area of type 9 has been carried out in response to issues raised by Eden District Council and Copeland Borough Council, parish councils, wind energy developers and environmental organisations. This resulted in changes being made to the landscape capacity in different areas of landscape character type 9, including one such area in South Lakeland, which has been downgraded from moderate - high capacity to moderate.

Section 3 – Guidance on carrying out a landscape and visual impact assessment has been amended.

Conclusions of the Sustainability Appraisal and Habitats Regulations Assessment

14. The WESPD was subject to both Sustainability Appraisal and a Habitats Regulations Assessment. The Sustainability Appraisal and Habitats regulations Assessment Reports were approved at the Cabinet meeting on 15th August 2007.
15. The Sustainability Appraisal report concluded that the WESPD performs most strongly against landscape and visual impact sustainability objectives in particular but less well against sustainability objectives relating to the water environment, biodiversity, soil quality, sustainable use of resources, waste management and social issues. The WESPD text has been strengthened in relation to these issues but the document retains a focus on landscape and visual issues. This is due to the fact that guidance on other issues is already widely available, whereas guidance on landscape and visual issues, despite being a key element of decision-making for wind energy development, is not.
16. The Habitats Regulations Assessment concluded that although the WESPD could, by its very nature, have significant effects on internationally important wildlife conservation sites, because the WESPD does not identify specific sites or stipulate the exact size of future wind energy developments, there is no way of determining the detail or likelihood of any such significant effects. For this reason, the WESPD has been amended to recommend that assessment under the Habitats Regulations be carried out on a site-by-site basis as

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proposals for wind energy development come forward. It is only at this later stage that the necessary details of a scheme will be available in order to make such an assessment. This will determine whether or not a scheme is likely to have significant effects on sites of international conservation importance. As a result of this amendment to the WESPD text, it was concluded that a full Appropriate Assessment of the WESPD itself was not required. This was agreed by Natural England.

Adoption of the Wind Energy Supplementary Planning Document

17. Under the joint working arrangements it is statutorily required that each Local Authority adopts the WESPD and approves the Schedule of representations, responses and proposed changes
- 1.6 SPDs need to link to a policy in the relevant authority's development plan. In the case of South Lakeland on this occasion, the WESPD will link to policies C26 – Wind Energy and C31 - Cumulative Impacts of Renewable Energy Projects, of the South Lakeland Local Plan 2006. The WESPD will provide further guidance in the application of these policies and specifically the interpretation of the criteria in Policy C26 when determining planning applications. The WESPD was prepared by Cumbria County Council on behalf of all the participating Authorities and as such does not establish the link between the WESPD and the policies in individual local plans. Therefore the 'Introduction' will need to be amended to refer to the policies in the South Lakeland Local Plan, which provide the basis for the supplementary guidance. It is recommended that paragraph 1.18 in the Introduction be replaced with the text in Appendix 6.
18. Cumbria County Council has also adopted the WESPD against Cumbria Structure Plan Policy R44, which sets criteria for judging renewable energy proposals outside the Lake District National Park and Areas of Outstanding Natural Beauty and policy R45, which sets criteria for judging renewable energy schemes within the Lake District National Park and Areas of Outstanding Natural Beauty. The WESPD provides detailed guidance to support the above planning policies in both the local and structure plans and to assist developers in designing schemes that are compatible with the criteria set out in them.
19. All participating local planning authorities have adopted the WESPD¹. It remains with individual authorities whether their decision to adopt is affected by the omitted representations.
20. It is important that a consistent approach is taken and under the joint working arrangements, each Authority is being presented with, in substance, the same recommendations.
21. A similar approach was successfully taken when endorsing the draft WESPD for public consultation purposes. Allerdale raised some comments on the text and Copeland and Eden raised specific issues affecting their geographic areas. All have been considered in full and a joint view has been made on how best to accommodate them in the revised document. These comments and changes are contained, along with all other representations, in the schedule of responses and proposed changes.
22. When preparing supplementary planning documents local authorities must have regard to environmental, social and economic considerations. A Sustainability Appraisal is required as part of the process of producing a supplementary planning document, and is used to

¹ Carlisle City will adopt the Supplementary Planning Document following the adoption of its emerging Local Plan early in 2008.

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help demonstrate how environmental, social and economic considerations are being addressed. Public consultation took place on the Sustainability Appraisal at the same time as the consultation draft WESPD. It was concluded that the proposed changes to the Supplementary Planning Document would result in a more sustainable document.

23. As part of the consultation process, Natural England requested that a Habitats Regulations Assessment be carried out on the WESPD in accordance with the Habitats Regulations. This has been carried out and resulted in the need for some text amendments. This text ensures that future planning applications include a Habitats Regulations Assessment to determine if any likely significant effects could arise to international wildlife sites and features as a result of the proposal. This has been agreed by Natural England.

Conclusion

- 26 Considering proposals for wind energy development in Cumbria, the local planning authorities need to take proper account of national and regional renewable energy policy and targets, which require a much higher rate of development than has been occurring in the past. However, a balance needs to be achieved between promoting and supporting wind energy development and protecting the character of Cumbria's high quality environment and landscapes. The WESPD aims to provide general advice and guidance on the full range of planning issues that need to be addressed by wind energy development along with more detailed advice on the landscape and visual impacts of wind energy schemes in order to help achieve this balance.
- 27 The WESPD provides a framework for considering planning applications that is supported by a comprehensive landscape capacity assessment. This enables a systematic approach to assessing the quality of different landscape types found across the County and their sensitivity to wind energy development. From this assessment, the potential capacity of each landscape character type and sub-type has been determined, along with the scale of development that might be appropriate in each.
- 28 In particular, the WESPD provides clear guidance to developers on the capacity of landscapes to accommodate wind energy schemes and the potential scales of development that would be appropriate. It also provides clear guidance that all other planning issues need to be taken into account when determining whether a scheme is acceptable.
- 29 The WESPD has focus on landscape and visual impact matters but the text has been strengthened following the consultation to have a more positive attitude towards wind energy developments, including new text on the importance and need for wind energy developments and the relationship with climate change.
- 30 A Sustainability Appraisal and Habitats Regulations Assessment have been carried out to accord with legislation and these have informed the final content of the WESPD. The WESPD was also considered against the draft Regional Spatial Strategy and was found to accord with the policies therein. The Government Office for the North West also confirmed that the WESPD accords with existing and emerging national policies.
- 31 For the reasons given above, it is recommended that South Lakeland District Council adopt the WESPD.

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APPENDIX 6

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Replacement text for paragraph 1.18 in the Introduction of the WESPD

South Lakeland Local Plan

The South Lakeland Local Plan adopted September 1997 covers the parts of the South Lakeland District outside the Lake District and Yorkshire Dales National Parks. Some policies in the Local Plan were replaced in 2006 by the South Lakeland Local Plan Alterations. In September 2007 the Secretary of State agreed to save most² of the policies in the Local Plan indefinitely until they are replaced by policies in the Local Development Framework. The policies in the South Lakeland Local Plan Alteration are saved until March 2009.

The South Lakeland Local Plan and Alteration recognise the importance of renewable energy and the potential for wind energy in South Lakeland. They support the need for a positive approach to renewable energy generation and specifically to wind energy. The WESPD provides detailed guidance and interpretation in the implementation of two saved policies in the South Lakeland Local Plan. It will be given significant weight in dealing with planning applications where these policies are applicable.

Policy C26 – Wind Energy provides a criteria-based approach to assessing the acceptability of wind energy developments. Criteria relate to the potential impact from wind energy developments on landscape character, natural and built heritage, biodiversity, local amenity, telecommunications and highways. The policy recognises the various benefits of wind energy development, including energy contribution as well as making provision for cumulative impacts, post-operation site restoration and mitigation measures.

Policy C31 – Cumulative Impact of Renewable Energy Projects covers the potential cumulative impacts of renewable energy developments, recognising that multiple development can have a significant impact on the landscape and nature conservation.

Both policies are set out in full in Appendix 1.

Other Local Plans

The WESPD was also adopted by the Local Planning Authorities listed on the inside of the front cover and provides detailed guidance and interpretation in the implementation of several saved policies these Planning Authorities. These policies are set out in full in Appendix 1. This document will be given significant weight in dealing with planning applications.

² All policies were saved except four.

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