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**Report to:** Cabinet  
Council

**Date of Meeting:** 16 August 2012  
6 September 2012

**Subject:** Merseyside and Halton Waste Local Plan - Modifications arising from Public Examination

**Report of:** Alan Lunt  
Director of the Built Environment

**Wards Affected:** All

**Is this a Key Decision?** Yes

**Is it included in the Forward Plan?**  
Yes

**Exempt/Confidential**

No

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### **Purpose/Summary**

This report seeks to:

- (i) Update Members on progress and the outcomes of the public Examination process for the Waste Local Plan to date;
- (ii) Seek approval of the main modifications to the Waste Local Plan required as a result of the Examination process;
- (iii) Seek approval for consultation on the modifications required;
- (iv) Set out the final stages to Waste Local Plan adoption.

### **Recommendations**

That Cabinet recommend that Council approve

- the modifications (both main and additional) to the Waste Local Plan
- public consultation on the modifications to the Waste Local Plan
- to delegate District officers within the Waste Local Plan Steering Group to make necessary further minor and typographical changes to the Waste Local Plan prior to Council approval being sought for adoption.

That Council approve

- the modifications (both main and additional) to the Waste Local Plan
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**How does the decision contribute to the Council’s Corporate Objectives?**

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Jobs and Prosperity		✓	
3	Environmental Sustainability	✓		
4	Health and Well-Being		✓	
5	Children and Young People		✓	
6	Creating Safe Communities		✓	
7	Creating Inclusive Communities		✓	
8	Improving the Quality of Council Services and Strengthening Local Democracy	✓		

**Reasons for the Recommendations:**

So that the proposed modifications to the Waste Plan can be consulted on and submitted to the Inspector.

**What will it cost and how will it be financed?**

**(A) Revenue Costs**

There are no additional revenue implications arising from this report. The costs associated with addressing the required modifications to the Plan and the further consultation that will then be required can be met from the existing Local Plans Budget.

**(B) Capital Costs**

N/A

**Implications:**

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

<p><b>Legal</b> Paragraph 178 of the National Planning Policy Framework states that "Public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the strategic priorities set out in paragraph 156. The Government expects joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities". Waste management is one of the strategic priorities set out in paragraph 156 of the NPPF</p>
<p><b>Human Resources</b>  N/a</p>
<p><b>Equality</b> 1. No Equality Implication</p>

- |    |  |                          |
|----|--|--------------------------|
| 2. | Equality Implications identified and mitigated   |                          |
| 3. | Equality Implication identified and risk remains | <input type="checkbox"/> |

**Impact on Service Delivery:**

**What consultations have taken place on the proposals and when?**

The Head of Corporate Finance (FD1692) and Head of Corporate Legal Services (LD1017/12) have been consulted and any comments have been incorporated into the report.

**Are there any other options available for consideration?**

No. This is a statutory requirement

**Implementation Date for the Decision**

Immediately following the Council.

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**Background Papers:**

There are no background papers available for inspection.

## **1. Introduction/Background**

- 1.1 Members approved the Publication and Submission of the Joint Merseyside and Halton Waste Development Plan Document (now known as the Waste Local Plan) at Full Council meetings between September and December 2011. The Waste Local Plan seeks to guide the future development of waste management and disposal facilities across the 6 partner Districts through a combination of policies and land allocations that will seek to move waste management up the Waste Hierarchy [i.e. more re-use and recycling] and away from landfill disposal. The Waste Local Plan must conform to national policy and meet the waste management needs of the Plan area.
- 1.2 It has taken several years of joint working, local authority investment and public consultation to get the Waste Local Plan to this advanced stage. The Plan has been prepared within the context of a rapidly changing availability of land which is suitable for waste management facilities. Technology continues to change rapidly as do the contractual and economic considerations governing the availability of land and investment finance. This has created the need for the Waste Local Plan to be adaptable and have the ability to respond to change through a flexible policy framework. Throughout Waste Local Plan preparation, considerable effort has been expended on ensuring that the technical evidence base is robust and up-to-date.

## **2. Public Examination Hearing and Required Modifications**

- 2.1 The Waste Local Plan was submitted for Public Examination in February 2012. An independent Planning Inspector, Elizabeth Ord, was appointed by the Secretary of State to examine the Waste Local Plan. Her role is to examine and test the legal compliance and soundness of the submitted plan. Any further changes to the Plan must be owned and led by the Plan's sponsors – the six Local Planning Authorities – in response to the findings of the Examination process. The Public Hearings are currently adjourned to allow consultation to take place on a number of proposed modifications that the Inspector believes are necessary before she can recommend that the Plan can be adopted.

## **3. Hearing Outcomes**

- 3.1 As part of the Examination process, all the representations received during the consultation process were assessed by the Planning Inspector on the basis of whether they identified any soundness or legal compliance issues and whether changes suggested are necessary to make the Plan sound. A total of 68 representations were received from 37 organisations and individuals. Table 1 lists the organisations that appeared at the Hearing sessions to present their case. For all representations submitted the Districts, with technical support from MEAS, not only responded directly to the issues raised but also responded to the questions posed by the Inspector. 80 additional queries or questions were raised by the Inspector prior to the Hearing sessions and were answered by MEAS and the Districts to the satisfaction of the Inspector. The hearing sessions were focussed on the matters of greatest importance as identified by the Inspector.

Table 1: Organisations that Appeared at the Waste Local Plan Examination in Public (June 2012)

<b>Name of Organisation</b>	<b>Matter of Concern</b>
Peel Holdings	Sub-regional sites and flexibility
Associated British Ports	Sub-regional sites and flexibility
Cheshire West and Chester Council	Export of waste to landfill outside Merseyside and Halton, and utilisation existing void space. Overarching waste strategy and Energy from Waste
Lancashire County Council	Export of waste to landfill outside of Merseyside and Halton and utilisation of existing void space. Overarching waste strategy, vision and strategic objectives
Rainford Parish Council	Sub-regional sites
Cory Environmental (Central) Ltd	Allocation of landfill and use of available void space
Merseyside Recycling and Waste Authority	Energy from Waste
Sanderson Weatherall representing the Bank of Ireland	Landowner interests with respect to site S1 (Sandwash Close, St.Helens)

- 3.2 Copies of all the representations considered by the Inspector can be viewed on the Waste Planning Merseyside consultation portal at [http://merseysideeas-consult.limehouse.co.uk/portal/public\\_docs/wdprd\\_docarchive](http://merseysideeas-consult.limehouse.co.uk/portal/public_docs/wdprd_docarchive) . MEAS and the Waste Planning Authorities have worked proactively to resolve as many residual objections as possible both before and during the Hearing sessions. Statements of common ground have been agreed with ABP, Cory Environmental, Cheshire West and Chester Council and Peel Holdings. Substantial progress has also been made in resolving the issues raised by Lancashire County Council and the Merseyside Recycling and Waste Authority.

#### **4. Legislation and Policy Changes**

- 4.1 Since the Publication and Submission of the Waste Local Plan several important national changes have taken place, including the publication of the new National Planning Policy Framework (The Framework), the Localism Act 2011 and new national Local Planning Regulations. There has also been a steady stream of new initiatives and guidance from the Planning Inspectorate, DCLG and the Planning Officers Society. Two of the new requirements have required an immediate and direct response in the Waste Local Plan.
- 4.2 Firstly, a new Duty to Co-operate has been introduced which requires new ways of proactive working to resolve issues with neighbouring authorities and others during the Plan making process. Fulfilment of the Duty to Co-operate is an absolute test, which the Waste Local Plan must either pass or fail. The Waste Local Plan has, however, appeared to fare well against this test by virtue of the fact that it is a joint plan founded on a high level of prolonged co-operation between the Districts, and that regular consultation and involvement had already

taken place with neighbouring authorities and other relevant agencies throughout the Plan preparation process.

- 4.3 Secondly, The Framework now includes a requirement for all plans, irrespective of their scope or content, to include an explicit policy statement to support the implementation of the new presumption in favour of sustainable development. The inclusion of the presumption is a non-negotiable requirement. This issue was identified by the Inspector during the pre-hearing meeting in April and was confirmed as a requirement in June, despite counter arguments being advanced by the Districts. A new Policy (WM0) on the presumption in favour of sustainable development has therefore been included in the Plan. This policy is based on a “model policy” provided by the Planning Inspectorate, which covers the requirement set out in the Framework.

## 5. Modifications

- 5.1 The imposed inclusion of this new policy triggers a procedural requirement to advertise and consult on a “main modification” to the Waste Local Plan. Not only does this require a new consultation with its inherent costs and timescale implications but it also requires a round of further Council approvals.
- 5.2 Other modifications have also been proposed to respond to the justifiable concerns of objectors to the Plan, where the Inspector indicated that they ought to be addressed. The modifications seek to improve the Plan in terms of greater policy clarity, and improved site deliverability. The key changes are termed “main modifications” and were discussed in detail and at length during the Examination Hearing sessions.
- 5.3 A total of eight main modifications were discussed and agreed in principle during the Examination process. None of these main modifications change the policy direction, strategy or agreed approach of the Waste Local Plan. Rather, they further improve the Plan and should make complying with and interpreting policy more straightforward. Six main modifications relate to policy and two to sites and are summarised in Table 2 with changes to the detailed policy wording presented in the Annex.
- 5.4 Responding explicitly to issues of particular concern to the Planning Inspector should increase the likelihood that the Waste Local Plan will be declared sound and suitable for formal adoption.

Table 2: Summary of Main Modifications to the Waste Local Plan (See the Annex for full details)

<b>Nature of Main Modification</b>	<b>Reason for Modification</b>
New Policy – WM0 Presumption in Favour of Sustainable Development	Imposed modification resulting from changes to national planning policy.
Overarching Waste Management Strategy Re-wording to clarify intent of strategy.	Following objections from Cheshire West & Chester and Lancashire County Councils.
Policy WM2 – Sub-regional Sites Substitution of sub-regional site in St Helens	Substitution following late withdrawal of support by landowner. Exemption following objections from Peel

Port-based sub-regional sites exempted from safeguarding due to strategic nature of ports.	Holdings Ltd and Associated British Ports.
Policy WM3 – District-level Sites Removal of site H3	Site removed following late withdrawal of support by landowner for operational reasons.
Policy WM7 – Protecting Existing Waste Management Capacity Making the implicit intent with respect to protecting landfill void space more explicit.	To improve the deliverability of the Plan following objections from Cheshire West & Chester and Lancashire County Councils and Cory Environmental (Central) Ltd.
Policy WM13 – Planning Applications for New Waste Management Facilities on Unallocated Sites Minor re-wording	To bring policy in line with changes proposed to policy WM15.
Policy WM14 – Energy from Waste Provision of criteria based wording to enable EfW if existing operational or consented capacity unavailable.	To improve the deliverability of the Plan following objections raised by Cheshire West & Chester and Merseyside Recycling and Waste Authority.
Policy WM15 – Landfill on Unallocated Sites To make intent of policy clearer and the wording more positive.	To improve the deliverability of the Plan following objections from Cheshire West & Chester and Lancashire County Councils and Cory Environmental (Central) Ltd.

- 5.5 The main modifications must now be formally endorsed by each of the partner Councils and consulted on before the Inspector can take them into account. The main modifications must also be reassessed in terms of Sustainability Appraisal and Habitats Regulations Assessment to demonstrate full procedural compliance. Again, this is a non-negotiable requirement which will also reduce the risk of legal challenge.
- 5.6 A number of additional more minor modifications have also been proposed, in discussion with the Inspector, to further improve the interpretation of the Plan. These are of less concern to the Inspector’s final report but are nonetheless important in terms of clarifying and explaining how the Plan will deliver its objectives. It is advisable that these additional modifications are also subject to public consultation to comply with Statements of Community Involvement and to guard against legal challenge. The additional modifications are also summarised in the Annex and their scope primarily relates to changes to the supporting text and minor changes to site profiles. Again, none of the additional modifications proposed will change the overall strategy or policy direction of the Waste Local Plan.
- 5.7 Since the report was approved by Planning Committee on 25th July, the Inspector has suggested several changes to the schedule of Modifications. Mainly these have been suggestions to move text from “Additional” to “Main” modifications. These changes are summarised below.

- These further changes to the Main Modifications are as follows:
  - Policy WM0 – very minor changes to wording for clarification (Inspector was concerned that the current wording implied that other LDF documents were somehow part of the Waste Local Plan)
  - Policy WM2 – some explanatory text (para 4.15) moved from Additional Modifications Schedule to the Main Modifications Schedule
  - Policy WM7 – Additional sentence inserted under “criteria for protecting existing WM capacity” as follows: “One or more of the above criteria must be met for a change of use to be acceptable”.
- Changes to Additional Modifications:
  - WM15 – Explanatory text added for this policy
  - Changes to Site Profile for site S3 (change to permitted extraction area)
- Change to Generic modifications: update reference to Core Strategies and other Development Plan Documents to reflect the terms used in the new planning guidance.

## **6. The Approvals and Consultation Process for Modifications**

- 6.1 Council approval is required by all Districts prior to the advertising and consultation of the modifications to the Waste Local Plan. The last programmed Full Council approval is time-tabled for 17<sup>th</sup> October 2012 after which the Schedules of Changes to the Waste Local Plan will be printed, advertised and consulted upon for a 6-week period. This is the minimum period required to comply with the districts’ Statements of Community Involvement. Members should note that the scope of the consultation is restricted to the modifications only – any observations on other elements of the Plan would at this stage be inadmissible.
- 6.2 Given that a replacement sub-regional site is required in St. Helens, to guard against the risk of procedural challenge it is recommended to arrange a single public consultation event to support the allocation of the site identified, even though the replacement site was previously consulted upon at an earlier stage.
- 6.3 Following completion of the consultation, the Merseyside Environmental Advisory Service and the Districts will consider and collate the representations received and pass this information to the Inspector. It is a matter for the Inspector to consider the merits of this information and to form a view on whether she wishes to reconvene further Hearing session(s) to discuss the new representations received and whether there are any issues that require further exploration. Alternatively, the Inspector can proceed without a further Hearing to the completion of her Report.



## 7. Final Steps

- 7.1 The Inspector's report, which is estimated to be delivered in late January / February 2013, will state whether the Plan meets the stringent legal compliance, soundness and Duty to Co-operate tests and is suitable for adoption. Two outcomes are possible. If the Plan meets the tests the Councils can proceed to formal adoption. If the Plan fails the tests, a step back will be required in order to address the issues identified. Given that the Inspector has indicated broad support for the proposed modifications, this outcome is considered less likely, subject to any further consultation comments by third parties. However it is important that Members appreciate that the main modifications to the Waste Local Plan set out in this report are deemed essential to pass the necessary Examination tests.
- 7.2 On the assumption that the Waste Local Plan is found to be legally compliant and sound then the Districts will be able to proceed to the following final stages:
- Agree the date that the Waste Local Plan will become a material consideration in the determination of planning applications, which is most likely to be the date of publication of the Inspector's report;
  - Council approvals to formally adopt the Waste Local Plan as part of their own statutory land use development frameworks;
  - Agree a single adoption date from which the Waste Local Plan would come into full effect in the Districts;

These matters will be the subject of a further report to each of the Councils during early 2013.

A Schedule of Requested Main Modifications and additional Modifications for the Merseyside and Halton Waste Local Plan can be viewed by accessing the Council's Document Library using the following link:

<http://modgov.sefton.gov.uk/moderngov/documents/s40895/Schedule%20of%20Requested%20Main%20Modifications%20and%20additional%20Modifications%20for%20the%20Merseyside%20and%20Halton%20Waste%20Local%20Plan.pdf>