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APPENDIX 6 TO RSAP 5

This is the December 2010 Inspector's Report on the previous Examination of the Site Allocation Policies and Proposals Map





The Planning
Inspectorate

Report to Cumbria County Council Council

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an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 1st December 2010

PLANNING AND COMPULSORY PURCHASE ACT 2004

SECTION 20

**REPORT ON THE EXAMINATION INTO THE SITE ALLOCATIONS POLICIES AND
PROPOSALS MAP**

DEVELOPMENT PLAN DOCUMENT

Document submitted for examination on 30 April 2010

Examination Hearings held between 28 September 2010 and 20 October 2010

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ABBREVIATIONS USED IN THIS REPORT

| | |
|------|--|
| AMR | Annual Monitoring Report |
| CNDR | Carlisle Northern Development Route |
| CS | Core Strategy |
| DPD | Development Plan Document |
| EfW | Energy from Waste |
| HWRC | Household Waste Recycling Centre |
| GDCP | Generic Development Control Policies Development Plan Document |
| LLW | Low Level Radioactive Wastes |
| LLWR | Low Level Waste Repository near Drigg |
| LP | Local Plan |
| MBT | Mechanical and Biological Treatment |
| MCA | Mineral Consultation Area |
| MSA | Mineral Safeguarding Area |
| MWDF | Minerals and Waste Development Framework |
| MWDS | Minerals and Waste Development Scheme |
| NDA | Nuclear Decommissioning Authority |
| PPS | Planning Policy Statement |
| RSS | Regional Spatial Strategy |
| SA | Sustainability Appraisal |
| SCI | Statement of Community Involvement |
| SRF | Solid Recovered Fuel |
| SFRA | Strategic Flood Risk Assessment |
| VLLW | Very Low Level Radioactive Wastes |

Non-Technical Summary

This report concludes that the Site Allocations Policies and Proposals Map Development Plan Document (together with the adopted Core Strategy and Generic Development Control Policies Development Plan Documents) provides an appropriate basis for the planning of Waste and Minerals development in Cumbria over the period to 2020. The Council has sufficient evidence to support the approach taken to site identification and can show that those allocated have a reasonable chance of being developed to enable the Core Strategy to be delivered.

A number of changes are needed to meet legal and statutory requirements. These can be summarised as follows:

- Deletion of Hespian Wood from policy 1 with consequential changes to the text as the deliverability of the identified site is not certain;
- Deletion of the Innovia, Wigton site from policy 3 and consequential changes to the text and Chapter 7 site maps as the site is within the functional floodplain and its allocation conflicts with national policy;
- Reclassification of Goldmire Quarry as a First Preference site in policy 4 and consequential changes to the text to ensure consistency with the Core Strategy objective to give priority to non-inert landfill in the south of the County;
- Removal of reference to Very Low Level Radioactive Wastes and the land adjacent to Sellafield from policy 5, the replacement of paragraph 3.11 by a number of new paragraphs and consequential changes to the text and Chapter 7 site maps to ensure consistency with national plan-making policy and the Core Strategy; to ensure that only sites deliverable in the short term are allocated; and to ensure commitment to an early review of this element of the Minerals and Waste Development Framework;
- Reclassification of Roose sand quarry as a First Preference site in policy 6 and the addition of Roosecote as an area of search in the same policy with consequential additions and changes to the text and Chapter 7 site maps to ensure consistency with the Core Strategy objective to give priority to sand and gravel extraction in the south of the County;
- The addition of new text at the end of paragraph 3.22 to explain the addition of a map showing areas licensed for coalbed methane and the extent of the deep coalfield Mineral Safeguarding Area and a new map added to Chapter 7 to achieve consistency with national policy.

Most of the changes recommended in this report are based on proposals put forward by the Council in response to points raised and suggestions discussed during the public examination. The changes do not alter the thrust of the Council's overall strategy and, in the case of that for policy 5, reinstate the adopted strategy for the management of Low and Very Low Level radioactive wastes.

Introduction

- i. This report contains my assessment of the *Cumbria County Council Site Allocations Policies and Proposals Map* Development Plan Document (DPD) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004. It considers whether the DPD is compliant in legal terms and whether it is sound. Planning Policy Statement (PPS) 12 (paragraphs 4.51-4.52) makes clear that to be sound, a DPD should be justified, effective and consistent with national policy.
- ii. The starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound plan. The basis for my examination is the submitted draft DPD (April 2010)¹. However, this is not the same as the document published for consultation in December 2009². This matter is addressed in my report.
- iii. My report deals with the changes that are needed to make the DPD sound and they are identified in bold in the report (**RC-S** or **IC**). All but one of these substantive changes has been proposed by the Council and they are presented in Appendix A. The substantive and consequential changes that I recommend are set out in Appendix C. None of these changes should materially alter the substance of the DPD and its policies, or undermine the sustainability appraisal and participatory processes undertaken.
- iv. Other changes are put forward by the Council as factual updates, corrections of minor errors or other minor amendments in the interests of clarity. These changes do not relate to soundness and I endorse the Council's view that they improve the DPD. Generally, they are referred to in this report (RC-E) only where the local community's understanding of the DPD to be adopted would be enhanced by doing so. All are shown in Appendix B. I am content for the Council to make any additional minor changes to page, figure, paragraph numbering and to correct any spelling errors prior to adoption.
- v. References in my report to documentary sources are provided in footnotes, quoting the reference number in the examination library.

¹ SAP1 and Proposals Maps

² LD163

Legal Requirements

1. My examination of the compliance of the DPD with the legal requirements is summarised in the table below. I conclude that the DPD meets them all subject to the changes recommended.

| LEGAL REQUIREMENTS | |
|---|--|
| Minerals and Waste Development Scheme (MWDS) | The DPD is identified within the approved MWDS March 2009 which sets out an expected adoption date of December 2010. The content of the DPD is compliant with the MWDS although the timing has slipped for the reasons set out by the Council ³ . |
| Statement of Community Involvement (SCI) and relevant regulations | The SCI was adopted in 2006 and consultation has been compliant with the requirements therein. |
| Sustainability Appraisal (SA) | SA has been carried out, independently verified and is adequate. |
| Appropriate Assessment (AA) | The Habitats Regulations Assessment ⁴ concludes that the DPD is not likely to adversely affect the integrity of the designated sites, a conclusion endorsed by Natural England. |
| National and Core Strategy Policy | The DPD complies with national and Core Strategy policy except where indicated and changes are recommended. |
| County Council Plan and the Community Strategies of the constituent Borough and District Councils | Satisfactory regard has been paid to these documents. |
| 2004 Act and Regulations (as amended) | The DPD complies with the Act and the Regulations. |

2. There are three issues arising from the consideration of the DPD against the legal requirements that must be met.

3. Although the Council considers that it may not have complied with Regulation 14(3)(b)⁵ this view is unnecessarily cautious. Together with the Chapter 7 site maps, the Proposals Maps show all the required information and are clear when viewed electronically. However, the Council acknowledges that in paper form they are difficult to read. The Council has therefore produced larger scale inserts, the areas covered being indicated on the Proposals Maps. The Regulation is thus satisfied since the more detailed paper inserts are provided purely for information purposes and are not inset maps within the meaning of the statute. I endorse changes RC-E1 and RC-E12 which make this clear.

³ ED56a

⁴ SAP4

⁵ ED56g

4. The document published for the purpose of Regulation 27⁶ was not the same as that submitted at Regulation 30⁷. While largely a matter of presentation whereby LD163 was split up into the constituent parts required for submission at Regulation 30 the Council also deleted five sites from the DPD, changed the status of another and altered the extent of the Mineral Safeguarding Area (MSA) for gypsum.

5. Non statutory Communities and Local Government Department advice⁸ is that this is possible but steps have to be taken to advertise the changes, to give an opportunity for comment and to then submit those comments with the other documents necessary at the Regulation 30 stage.

6. The Council undertook a highly focussed consultation⁹ and published the outcome some two weeks after submission¹⁰. Those who had supported the deleted sites CA28 and CA29 at Regulation 28 stage were also given an opportunity to come to the Hearing session (session 5) when this matter was discussed.

7. The Council has clearly undertaken an extensive consultation exercise as explained in its evidence¹¹. Anyone interested in the DPD and its progress would therefore have had ample opportunity to comment. The Council has undertaken most of the steps advised in the Plan Making Manual although they have not always been taken in the correct order or at the right time. Moreover, no addendum was produced and the further consultation was so narrowly targeted that only those who had already made themselves known to the Council would have been contacted; there was no general invitation for further comment. Nevertheless, despite this breach of the letter of the statute, the spirit of the Regulations (consultation to avoid any substantial prejudice) has been followed.

8. Regulation 34 requires notification of the Hearing sessions to be given by local advertisement not less than six weeks before they begin. Due to an administrative error complete County coverage was not achieved. Although this mistake was corrected as soon as it was identified, this was within the six week period prior to the opening session on the 28 September 2010. Nevertheless, the Council agreed with my view that, being a post submission administrative matter, this did not fall within the scope of s20 of the 2004 Act and was not therefore a matter for me to consider any further.

⁶ LD163

⁷ SAP1 and Proposals Maps

⁸ The Plan Making Manual

⁹ ED48

¹⁰ ED58

¹¹ ED56a

Assessment of Soundness

Preamble

9. Together with the Core Strategy (CS) and the Generic Development Control Policies (GDCCP) DPDs, this DPD makes up the Cumbria County Council Minerals and Waste Development Framework (MWDF). The CS and GDCCP were adopted as recently as April 2009 having been found sound and thus consistent with national and regional policy then prevailing. They set out the local community's strategy for minerals and waste development over the Plan period and the policies that the local community will use when considering the minerals and waste development proposals that come forward.

10. This DPD identifies the specific sites, preferred areas, areas of search and the MSAs necessary to implement the community's strategy. It relies wholly on the CS and the GDCCP for development management purposes, something that I return to in my report before dealing with the main issues. In assessing the soundness of this DPD, consistency with the spatial strategy and policy approach set out in the CS is very important, as is the justification for each site identified and its deliverability within the Plan period.

11. Following the submission of the DPD, the Coalition Government's commitment to abolish regional strategies was announced and this will be taken forward through legislation in due course. No representations have been made that this would raise any implications for this examination. Since the purpose of this DPD is, in essence, to enable the implementation of the adopted CS and this purpose would be unaffected by any revocation, this is the correct analysis.

Main Issues

12. Taking account of all the representations, written evidence and the discussions that took place at the examination Hearings I have identified seven main issues upon which the soundness of the DPD depends. As a context for my consideration of them an understanding of the way the Council intends the CS and GDCCP policies to be interpreted when faced with development proposals would be helpful.

13. Change RC-E5 confirms that for non-landfill waste management facilities GDCCP policy DC4 and CS policies 2, 8 and 9 which are referred to in it, will not be interpreted restrictively. This is an important clarification and I endorse this recommended change.

14. In contrast, the Council confirmed during the Hearing sessions that GDCCP policy DC5, which addresses all proposals for additional landfill capacity, will be interpreted restrictively.

15. Turning now to minerals, the CS sets out the different roles that preferred areas, areas of search, MSAs and Mineral Consultation Areas

(MCA) play in providing for and safeguarding minerals¹². However, the distinction, which between areas of search and MSAs is quite significant in the implied likelihood of development occurring, is not drawn out in GDCP policy DC6. Under this policy all proposals for non-energy minerals development outside preferred areas would be treated the same.

16. With regard to energy minerals, the preamble to GDCP policy DC7 states that permission will be granted for proposals that conform to the CS where the listed criteria are met. CS policy 14 requires MSAs and/or areas of search for the indicative shallow coal resources identified by the British Geological Survey to be identified. However, the GDCP policies do not explicitly require proposals to be within those identified areas to be acceptable in principle. The link to the CS policy is not therefore obvious.

17. Several of the DPD policies list First Preference and Reserve Sites. Paragraph 2.3 of the DPD says that the Reserve Sites are intended to come forward if the First Preference Sites do not for whatever reason. For sites to be delivered in this sequence there needs to be some policy mechanism to give the intended priority to the First Preference Sites. It is not within the GDCP and I therefore welcome and endorse changes RC-E5 and RC-E6. However, for this approach to be effective and the DPD flexible, the Reserve Sites also need to be as deliverable as the First Preference Sites and this is a matter that I return to under Issues 3 and 4.

Issue 1 – Whether the proposed sites and areas fully meet the identified requirements for waste management capacity and minerals production over the Plan period consistent with the CS

18. The local community's long term spatial vision for waste and minerals development is set out in Box 1 of the CS. Included are:

- Having the right types of new waste management facilities needed to reduce the amount of Cumbria's waste going to landfill built on time and in the right places;
- Providing facilities to manage the Low Level radioactive wastes arising from the Sellafield/Windscale complex;
- Prudent provision of minerals from Cumbria's own resources to meet its regeneration, renewal and development needs together with those minerals proven to be required to meet regional and national needs;
- Keeping waste and minerals road transport miles to a minimum by maintaining a pattern of local facilities that suits the geographic characteristics of Cumbria thus securing a saving in greenhouse gas emissions and fossil energy demand.

19. CS policy 7 sets out the strategic areas for new developments. For major new waste management facilities (excluding Energy from Waste (EfW)) the Carlisle and Workington/Whitehaven areas (in the north) and Barrow-in-Furness and Kendal areas (in the south) are identified.

¹² CSD14 paragraph 10.1

Strategic areas for future landfill capacity should be provided in the north, south and west of the County with priority being given to the south. For minerals, the Kirkby Thore/Long Marton area is shown as the only location for further supplies of gypsum while specific sites are indicated for nationally important very high specification roadstone (Ghyll Scaur) and mudstones (High Greenscoe Quarry).

20. CS policy 9 sets out the number and size of sites required for waste treatment facilities and EfW incinerators; the need for nine new or enlarged Household Waste Recycling Centres (HWRC); and the requirement to find an additional landfill capacity of 2 million cubic metres. Other than in the general terms indicated, the policy is not specific about either the waste treatment facility type or whether it should be for the management of municipal or commercial and industrial waste. Given the site selection criteria set out¹³ the CS commits this DPD to try and allocate more than the minimum number of sites identified both to provide flexibility and to recognise that some may be developed for other uses.

21. For minerals, CS policy 13 includes a provision that the County's sub-regional apportionment for primary land-won crushed rock and sand and gravel production will be applied taking into account the pattern of quarries, the areas that they supply and the dispersed settlement pattern and transport routes. The clear implication is that for this reason further provision for sand and gravel needs to be sought in the south of the County¹⁴. CS policy 14 establishes the approach to mineral safeguarding and ranges from a requirement for the identification of highly specific preferred areas, areas of search or MSAs for certain minerals to more wide ranging MCAs.

22. Low Level radioactive waste (LLW) is addressed by CS policy 12. The interpretation of this policy is discussed later in my report under Issue 5.

23. The adopted CS was subject to Sustainability Appraisal (SA) and the strategy described above found to represent a sustainable pattern of development subject to this DPD identifying sites in the appropriate numbers and places.

24. The Municipal Waste Management contract was let after the CS was prepared. Planning permissions have now been granted for Mechanical and Biological Treatment (MBT) plants in the north and the south of the County and for waste transfer facilities in the north and near Penrith. A total of 10 sites (seven First Preference and three reserves) have been allocated in policy 1 for HWRCs, three others having been opened, extended or permitted by the time this DPD was submitted. Around twice as many sites as required have been identified in policies 2 and 3 for built facilities. Following an allowed appeal at Bennett Bank, which is an

¹³ CSD14 Table 7.1

¹⁴ CSD14 paragraph 10.20

existing non-inert landfill site near Barrow-in-Furness, provision for additional capacity is made in policy 4 in various locations in the County to provide the required balance of some 1.5 million cubic metres.

25. In landbank terms there is no need to identify additional sites for crushed rock or land-won sand and gravel extraction. Nevertheless, areas of search for sand and gravel are put forward in policy 6 to achieve a supply pattern better matched to the areas of demand. Other specific areas of search and a preferred area are listed in policy 6 for the particular minerals set out in CS policy 14 or to achieve a particular environmental outcome. Sites are also indicated for secondary or recycled aggregates facilities and policy 7 gives a steer to the Proposals Maps where the MSAs are shown.

26. To conclude on this issue the submitted DPD, with one exception, therefore makes provision for sites in numbers, capacity and distribution in accordance with the CS subject to the sites themselves being both justified by the evidence and deliverable. These tests of soundness are considered under Issues 3 to 6 inclusive.

27. The exception is the provision of the integrated network of waste management facilities in the Barrow-in-Furness and Kendal strategic area which the Council confirmed during the Hearing sessions was the correct way to interpret CS policies 7 and 9¹⁵. An output of the MBT process is Solid Recovered Fuel (SRF) which the Council sees as being used with other waste material from commercial and industrial businesses to provide heat and power to large energy users thus saving demand on or contributing to the national grid.

28. Whereas sites for such facilities are identified in policy 3 in the north of the County none are allocated in the south. While acknowledging the difficulty in identifying suitable sites in the south, the Council recognises that the failure to do so leaves a gap in provision¹⁶ which compromises the ability to achieve the CS sustainability objective of minimising the 'waste miles' travelled if this material has to go to the north of the County for beneficial use. I return to this matter under Issue 3.

Issue 2 – Whether the proposed sites and areas have been identified through a robust selection process

29. Work commenced on this DPD in 2005 in parallel with the preparation of the CS and GDCP. Following Regulation 26¹⁷ consultations on all those DPDs progress on this DPD was delayed as explained by the Council¹⁸. Work recommenced in February 2009 leading to the submission of the DPD in April 2010.

¹⁵ ED77

¹⁶ ED77

¹⁷ Town and Country Planning (Local Development) (England) Regulations 2004 as amended

¹⁸ ED 56a

30. Over this period many potential sites were considered. The Council explained how those long listed¹⁹ emerged²⁰. Each potential waste site was assessed against the 11 site selection criteria specified in the CS²¹ with an additional 'safeguarding' criterion taken into account. For the potential minerals areas and sites fewer site selection criteria were taken into account. All potential sites were then scored against each criterion according to 'rules' developed and applied as set out by the Council²². Each criterion was of equal importance in the final assessment.

31. During the Hearing sessions the Council explained its view that the summaries at the foot of each site scoring matrix²³ provided an adequate statement of the reasons why a particular site was, or was not, taken forward. However, there are examples of sites that, on the face of it, have very similar 'scores' shown for specific site selection criteria but where one has been identified in the DPD while the other has not. Although there is no cause to doubt the Council's statement that there were reasons for the decision, what they are is not transparent in many cases.

32. Consequently, the application of an objective test in order to move from the long-listed sites in SAP8 to the allocated sites in the submitted DPD is not apparent. I do not therefore consider the site selection process to be either transparent or robust. However, with the exception of the policy 5 sites, no representations have been made that any of the allocated sites or areas are intrinsically unsuitable for the purpose proposed or that any of the challenger sites are put forward to replace, rather than add to, those in the DPD. Again, I deal with the policy 5 matter under Issue 5.

33. Notwithstanding these concerns about the selection process I do not believe this undermines the soundness of the DPD as long as the individual allocations that have emerged also meet the justified and effective tests of soundness.

Issue 3 – Whether the proposed sites identified in Policies 1, 2 and 3 for waste facilities excluding landfill are consistent with the CS and justified and deliverable

Introduction

34. The criteria used for the selection of the proposed sites derive from Table 7.1 of the CS which itself has been found to be consistent with national policy, specifically PPS10²⁴. In general terms the identified sites

¹⁹ SAP8

²⁰ ED73

²¹ CSD14 Table 7.1

²² SAP3

²³ SAP3 and SAP8

²⁴ ND5

have been assessed in terms of their performance against each of the criteria²⁵ and are thus consistent with the CS.

35. Within each of these three policies First Preference and Reserve Sites are listed. My reservations about the effectiveness of this approach have been resolved, in part, by recommended change RC-E6. However, in some cases, the reason why a Reserve Site has been included as such goes to deliverability and I deal with this below.

Policy 1: Sites for HWRCs

36. These facilities are popular with the public and play an important role in reducing the amount and nature of the waste requiring final disposal. They do therefore generate significant volumes of traffic and can cause pressure on the local highway network at busy times.

37. Representors have raised this and other site specific concerns which are, in the main, acknowledged by the Council in section 5 of the DPD as matters to be considered when planning applications are submitted and assessed against the appropriate GDCP policies. I therefore see no in principle objection to any of the First Preference Sites or Reserve Sites AL8 or CO11.

38. At the Hearing session the Council was far from clear whether the HWRC proposed as a Reserve Site at Hespian Wood could be accommodated within the site identified. The view of Cumbria Waste Management Ltd which would operate the site is that additional land may need to be identified to accommodate it but the Council is resistant to that.

39. Understandably, the Council wishes to avoid any further encroachment of industrial activity into the countryside. In addition, budget constraints suggest the proposal is unlikely to be pursued at this time. Although this may well change over the period of the DPD the GDCP policies would allow such a proposal to be considered if it does.

40. On balance, the Reserve Site at Hespian Wood (CA24) is not shown, on the evidence, to be deliverable within the identified site and I therefore welcome and endorse recommended change **RC-S1** that this site should be deleted from Policy 1 in order for the DPD to be found sound. I also endorse the consequential changes (**RC-S2 to RC-S3 inclusive**) to the text.

Policy 2: Sites for Waste Treatment Facilities other than EfW

41. Representors have expressed similar concerns with regard to traffic impact, proximity to housing and various environmental and nature conservation issues to those discussed under the Policy 1 sites. Again these are in the main acknowledged by the Council in section 5 of the DPD.

²⁵ SAP3

42. In principle there is no reason why any of these matters cannot be satisfactorily assessed as part of the planning application process. Each of the sites is therefore justified and there is no evidence to suggest that any of them cannot be delivered. Indeed site BA24 (Sowerby Woods) now has planning permission for the development of an MBT facility and I endorse the Council's recommendation (RC-E9) that this site be removed from the DPD.

43. In the DPD published at the Regulation 27 stage sites CA28 (Kingmoor Park Rockcliffe Estate) and CA29 (Kingmoor Park Heathlands Estate) were identified as Reserve Sites in policy 2²⁶. Highway capacity issues between the sites and the primary road network were noted but the construction of the Carlisle Northern Development Route (CNDR) was seen as potentially resolving this concern²⁷. In this respect, there is little material difference between these sites and others proposed in the DPD for the Carlisle area.

44. The Council explained that the traffic implications of the M6 extension for the local network had later caused elected members to take a different view, particularly as there was already adequate provision made in the DPD to meet the CS requirements. At the Hearing session Mr Williams and Mr Eastaugh gave very clear evidence of the environmental impact on Parkhouse Road now that Hespian Wood traffic no longer had direct access to the primary road network.

45. Section 5 of the DPD makes clear that for all affected identified sites the opening of the CNDR is a prerequisite for development to take place. The same stipulation could be applied to the development of sites CA28 and CA29 and there would not therefore appear to have been any material change in circumstances between Regulation 27 and 30 stages to justify their removal from the DPD.

46. However, as explained above, the Council undertook a focussed consultation on the changes made. At the Hearing session Kingmoor Park Properties, the landowner and therefore the party potentially most prejudiced, did not pursue an argument that either site should be reinstated into Policy 2.

47. Both sites are in employment use now. The Council has already set out the extent to which it considers that both comply with the site location criteria set out in the CS²⁸. Any proposals for the development of either for waste management uses could therefore be considered against GDCP policy DC4. Taking into account the way in which this policy is to be interpreted, I do not, on balance, disagree with the Council that policy 2 remains sound following the removal of these sites prior to submission.

²⁶ LD163

²⁷ SAP8

²⁸ SAP8

Policy 3: Sites for EfW plants

48. Following the award of the Municipal Waste Management contract (discussed under Issue 1), the purpose of this policy has shifted from the provision of facilities primarily for that contract to one that encourages and enables a wider-ranging response from the waste management industry to innovations in the thermal treatment of that waste which cannot be reused or recycled. It emerged during the Hearing sessions that the SRF coming from the MBT plants permitted in the north and the south of the County will give an important impetus to the development of appropriate facilities. The evidence from both Kingmoor Park Properties and Catalyst Lend Lease was also that scale of plant is a factor to be taken into account and the relatively limited amount of SRF likely to be available (some 75,000 tonnes in total from the two MBT plants) needs to be seen in this context.

49. All of the sites identified in policy 3 are in what CS policy 7 describes as the north of the County. Furthermore, as with other policies, more than the number of sites required to be consistent with CS policy 9 have been identified. However, the Council's cautious view that sites AL3, AL8 and AL18 are unlikely to all be developed for such facilities²⁹ was not challenged. Moreover, the identification of each builds the required flexibility into the DPD. To be consistent with the CS therefore, it would not be strictly necessary to identify further sites in either Carlisle or Wigton.

50. With respect to the Carlisle area only site CA31 is now identified following the removal of the Reserve Site CA29 between the Regulation 27 and 30 stages. Kingmoor Park Properties explained that both sites were connected to site infrastructure that would permit energy to be supplied to the whole of the business park development and that this was indeed an important advantage in the marketing of the development. However, the allocated site (CA31) was its clear preference with CA29 being very much a contingency.

51. Development of an EfW plant to serve the Kingmoor Park development would seem to be in accord with the objectives of both CS policies 2 and 8. The representor explained the economic benefit for the development as a whole and the development is very close to Hespian Wood and the MBT plant that could supply at least some of the SRF that could be used. There is no evidence that the preferred site of Kingmoor Park Properties is not deliverable in principle. However, the local community is clearly opposed to the Reserve Site being included in the DPD. In the event of CA31 not coming forward, an application for an EfW plant at site CA29, or elsewhere on the Kingmoor Park estate, could be considered against the GDCP policies referred to earlier in my report and the views of the local community on the detailed proposals taken into account at that stage. On balance therefore it is not necessary to

²⁹ ED56b

recommend any change to the submitted DPD for soundness in relation to this site.

52. Site AL30 is allocated to enable a particular company to develop a facility to meet its own high energy needs. However, it is included as a Reserve Site only in the submitted DPD because the identified site is in the functional floodplain³⁰ and the Council has concerns regarding deliverability.

53. The allocated site fails to meet one of the necessary requirements for a Reserve Site, namely the ability to be brought forward in the circumstances set out in the General Policy suggested by the Council in RC-E6. The Council suggests upgrading site AL30 to First Preference status (RC-E13) on the basis that there is a potentially practicable solution to the flood risk issue.

54. There may well be an acceptable means of carrying out the development³¹. In addition, more detailed flood risk assessments supporting other developments in the immediate area have to some extent cast doubt on the Strategic Flood Risk Assessment (SFRA) as it relates to those sites. However, there is no evidence that it is reasonable to infer from these more in-depth studies that the SFRA as a whole is unreliable. On the contrary, it would appear to reinforce the submission of a detailed application supported by a site specific flood risk assessment as the correct route to follow to secure the desired development in accordance with GDCP policy DC4.

55. Neither the submitted DPD policy in this respect nor the Council's recommended changes are justified by the Council's evidence base³² where the conclusion of the SFRA is that the proposed land use is not appropriate according to PPS25³³. Nor are either consistent with national policy which states that only water-compatible uses and specified essential infrastructure are appropriate in the functional floodplain; the proposed development would be neither of these.

56. I therefore cannot endorse the Council's recommended changes RC-E13 to RC-E15 inclusive. Instead, I recommend that the site be deleted from policy 3 (**IC1**) with consequential changes to the text and the Site Maps (**IC2 to IC4 inclusive**) since its inclusion in the DPD is not justified by the evidence base or consistent with national policy.

57. Finally, I turn to the acknowledged gap in the integrated network of waste management facilities in the south of the County. Through the DPD examination process Catalyst Lend Lease promoted the Sandscale Park site as one that could be added to policy 3³⁴. The Council indicated that,

³⁰ SAP1 paragraph 5.22

³¹ HD35

³² CSD11

³³ ND29

³⁴ SAP7 & ED76

had the site been promoted at an earlier stage in the process, it may well have been supported³⁵.

58. The representor has undertaken a site specific sustainability assessment of the proposed land on the same basis as that carried out by the Council. However, this has not been subject to consultation. I share the Council's concerns that the proximity of the site to a designated European Wildlife Site could lead to a requirement for Appropriate Assessment at this stage rather than when a planning application is prepared.

59. On balance, I agree with the Council that it is not appropriate to recommend the inclusion of this site in the DPD in order for it to be consistent with the CS and thus sound. In reaching this conclusion, I have attached considerable weight to the explanation given by the Council about the way the CS and GDCP policies will be applied and the likelihood that this acknowledged gap in provision can be filled by a planning proposal which accords with the policies of the development plan as a whole.

Issue 4 - Whether the proposed sites identified in Policy 4 for additional non-inert landfill capacity are consistent with the CS and justified and deliverable

60. Although the Council argued that work at the regional level suggested that less landfill capacity than identified in the CS was now likely to be needed³⁶, the scale of any reduction was not quantified. In addition, the factors contributing to this revised assessment seem little different to those underpinning the estimation of need identified in the CS³⁷. It was accepted during the Hearing session that the provision for which sites should be made remained the 1.5 million cubic metres required following the allowed appeal at Bennett Bank³⁸. This site now moves into the "capacity with planning permission" category as a result and I support the Council's view that it is unnecessary for it to be included within the policy as proposed by Waste Recycling Group.

61. There is little evidence of the assessments made by the Council of the additional void space that could be provided by the sites identified in Policy 4 or the annual rate at which it might come forward. The evidence suggests that during the Plan period:

- at least 660,000 cubic metres might be available at Lillyhall (site AL31)
- between 250,000 and 500,000 cubic metres might be available at Hespin Wood (site CA24) depending on the surface extent and depth of the area of fill

³⁵ ED56b

³⁶ SAP1 paragraph 3.10

³⁷ CSD14 paragraph 7.31

³⁸ ED57

- about 150,000 cubic metres would be available at Thackwood (site ED7) where clay extraction had now commenced, unless past rates of fill increased substantially

62. No evidence was available (apart from Thackwood) to suggest how the annual waste inputs implied by the above totals compared with current rates. No view can be taken therefore about the environmental implications of the associated traffic movements.

63. There appears little flexibility or margin for error within the policy if the 1.5 million cubic metres required is to be achieved and the submitted DPD to be consistent with the CS. Furthermore, Bennett Bank is permitted only until 2017. Without Goldmire Quarry (site BA10) coming forward, there may be a quantitative shortfall overall and there would be a gap in provision in the south of the County after Bennett Bank ceased receiving waste. Potentially, policy 4 is therefore inconsistent with the CS, particularly CS policy 9, if Goldmire Quarry is not a First Preference site as requested by Holker Estates³⁹.

64. I understand Goldmire Quarry to be a fissured limestone quarry. It is a significant challenge to demonstrate to the Environment Agency that such quarries can now be engineered to accept landfilling of non-inert waste materials, especially where, as in this case, some form of side-wall lining may be required. The representor has begun to design what may prove to be a suitable scheme but the precise details would depend on the pollution potential of the waste to be received.

65. There is no record of any response from the Environment Agency at Regulation 28 stage. The Council rely instead on an Environment Agency response earlier in the process when it appears that no in principle objection was raised and neither the representor nor the Council has sought the Agency's views on this proposal. This seems somewhat surprising given the Council's clear concerns regarding the deliverability of this site.

66. Although it seems likely that this site is required for the DPD to be consistent with the CS, I have the same reservations as the Council and Waste Recycling Group about its deliverability. However, the evidence of Holker Estates during the Hearing sessions was that the work to address these concerns is unlikely to be taken forward unless the DPD indicates that the site would otherwise be acceptable in principle. While this is mainly a commercial decision for those with an interest in the site, its status as a Reserve Site is not appropriate in such circumstances. First, it is needed in any event towards the end of the Plan period and, second, it would be inappropriate to hold it as a contingency site in the event of a failure of the others to come forward given the uncertainty surrounding its development.

³⁹ SAP7 & ED76

67. It either needs to be deleted from the DPD as undeliverable or the prospective developers need the higher degree of confidence now associated with a First Preference site following the changes recommended by the Council. On balance, I agree with and endorse the Council's recommendation that it become a First Preference site (**RC-S4 to RC-S6 inclusive**). The monitoring scheme will assess whether it can indeed be made available and appropriate action taken if not.

68. There appears, at first glance, a potential inconsistency between this conclusion and that for site AL30. However:

- A site is required during the Plan period for the DPD to continue to provide landfill capacity in the south of the County and thus be consistent with the CS. This is not the case for EfW facilities where there is considerable over provision in the north of the County against CS requirements.
- The Environment Agency has not advised that site BA10 cannot be developed for the purpose for which it has been allocated in the DPD because to do so would conflict with national policy. However, site AL30 is in a flood risk area that national policy states should not be used for the purpose proposed.
- The Council has confirmed that GDCP policy DC6 is to be interpreted restrictively which may prevent alternative sites coming forward while Bennett Bank remains operational whereas under GDCP policy DC4 the promoters of site AL30 could be successful with an application if a site specific flood risk assessment addresses the functional floodplain issue.

Issue 5 - Whether the proposed sites identified in Policy 5 for Low Level (LLW) and Very Low Level (VLLW) Radioactive Wastes are consistent with the CS and justified and deliverable

Introduction

69. The DPD would not be sound if policy 5 remained as submitted. For the reasons set out under this Issue it is not consistent with the CS or with national plan-making policy; arguably, neither site at Sellafield is justified by the evidence; and there are questions about the long term deliverability of both.

70. Having reflected on the discussion during the Hearing session the Council has recommended several changes to the policy and supporting text. On balance, for the reasons explained below under 'deliverability', I agree that it is correct to retain site CO36 in the policy, the scope of which would now be limited to LLW. I therefore welcome and endorse the recommended changes **RC-S7 to RC-S12 inclusive and RC-S21** which will make the DPD sound. At the Hearing session I undertook to comment on each of the tests of soundness discussed, even though failure to meet any of them would render the DPD unsound, as this may assist the Council in any review of the CS.

Consistency with the CS and national policy

71. The submitted CS policies covering radioactive wastes and their management were the subject of considerable discussion during the examination of that DPD and the GDCP. The CS policies and text adopted resulted from the examination Inspectors' recommendations. At my request, the Council included relevant extracts from the Inspectors' report as important context for the Hearing session discussion of policy 5⁴⁰.

72. During that examination the Council acknowledged that the submitted CS was unclear regarding VLLW⁴¹. However, the Inspectors accepted that the application of other CS and GDCP policies pending a review of that part of the CS being triggered would not leave a policy void for VLLW⁴².

73. The language of paragraphs 8.27 and 8.28 of the adopted CS is clear. They support CS policy 12 and say, in summary:

- the policy relates to LLW only, NOT its sub category VLLW.
- in assessing the performance of CS policy 12 and the need to review it account will be taken of the success in achieving the Nuclear Decommissioning Authority's (NDA) assumptions about moving waste up the hierarchy and diverting it away from the Low Level Waste Repository near Drigg (LLWR).
- the Annual Monitoring Reports (AMR) will identify any requirement for CS policy 12 to be reviewed.
- no policy for VLLW arising in Cumbria is included in either DPD.
- any proposals for managing these VLLW before a review of the CS would be considered in the context of the relevant CS and GDCP policies.

74. CS policy 12 clearly relates only to the LLWR itself and does not address either VLLW or LLW elsewhere in Cumbria, an interpretation that the Council accepted during the previous examination⁴³. In extending the scope of the MWDF to embrace VLLW and identifying two sites beyond the LLWR where this and LLW should be managed, submitted policy 5 cannot be consistent with the CS.

75. Furthermore, there is no evidence that the sequence required for the development of a spatial planning strategy has been followed in arriving at this policy approach. In addition to the reservations already expressed under Issue 2 concerning specific site selection, there has been no

⁴⁰ ED56d Appendix 4

⁴¹ ED56d Appendix 4 paragraph 8.71

⁴² ED56d Appendix 4 paragraph 8.72

⁴³ ED56d Appendix 4 paragraph 8.71 & 8.107

apparent consideration of waste management options or strategies for either LLW or VLLW before the inclusion of policy 5 in the DPD. Setting aside the procedural question 'can an allocations DPD be the vehicle for changing part of a CS' (the majority view of the planning professionals at the Hearing session being that it could not; a view with which I agree), this approach is not consistent with national plan-making policy.

Are there nevertheless exceptional reasons for the Council's review of CS policy for VLLW through this DPD?

76. The Council's approach has been prompted by two proposals to dispose of LLW/VLLW arising both within Cumbria and elsewhere⁴⁴. These are the challenger sites now being promoted through the examination by SITA UK (Keekle Head-site CO31) and by Waste Recycling Group (Lillyhall landfill-site AL31) and they have come forward much sooner, in the Council's submission, than envisaged by the CS.

77. During the Hearing session both the Council and Copeland Borough Council explained the economic problems being faced in the west of the County and the efforts being made to address these by way of regeneration and other initiatives. Their clear view is that the perception of Cumbria as the prime disposal/management area for the nation's radioactive waste is detrimental to the efforts being made to rebalance the local economy and makes it particularly hard to attract investment from outside the area. It is mainly this that has prompted the DPD approach of directing LLW/VLLW management to the allocated sites at the LLWR and the major potential generator of these wastes in the future within Cumbria, namely Sellafield. Although a letter from a potential inward investor was referred to by the Councils to support this stance, Waste Recycling Group gave anecdotal evidence from businesses near the Lillyhall waste management complex suggesting this was not universally true. It is difficult to resolve this conflicting information and probably unnecessary to do so for the purposes of this examination.

78. I appreciate the concerns expressed by both Councils. However, it is clear that the prospect of proposals coming forward was foreseen during the examination of the CS and GDCP when the Council said that it would expect to assess and determine any applications submitted before the national strategy had been approved and published against the relevant CS and GDCP policies⁴⁵. This position was confirmed in CS paragraph 8.28.

79. There, reference is made to, among others, CS policies 1 and 2. CS policy 1, second bullet, requires proposals to show that waste road miles will be minimised as far as is practicable. The final sentence of CS policy 2 states that all waste developments must ensure that they would not prejudice other regeneration and development initiatives. It was not clear from the evidence why, given that these two policies

⁴⁴ ED56d & ED60

⁴⁵ ED56d Appendix 4 paragraph 8.110

address the core concerns of the two local authorities, this policy framework was now judged inadequate to deal with the proposals coming forward.

80. Furthermore, the CS is absolutely clear about both the reasons why there is no CS policy for VLLW⁴⁶ and the trigger for CS policy 12 to be reviewed⁴⁷ which, in essence, is what the Council is seeking to do through this DPD.

81. Looking at these reasons and the trigger now:

- the 'uncertainties relating to the volumes, the way they may need to be managed and what off-site facilities may need to be provided'⁴⁸ remain⁴⁹;
- the national strategy for the management of solid LLW from the nuclear industry⁵⁰ was not adopted until August 2010, some three months after the DPD was submitted for examination; and
- the latest available AMR⁵¹ covers the period just prior to the adoption of the CS and so does not relate to it⁵².

82. The conclusion to draw, therefore, is that nothing of substance has changed between the adoption of the CS and the submission of this DPD to trigger the 'timely' review⁵³ of the CS approach that submitted policy 5 represents and to justify the policy as drafted.

Are the allocated sites justified by the evidence?

83. It was common ground that the LLWR was a valuable resource which should be preserved for the management, storage and, as appropriate, disposal of LLW. The use of this highly engineered facility for VLLW would be a waste of valuable capacity. Although the continuing uncertainties about the amounts of LLW and VLLW that will arise in the future have already been referred to, there was again no serious dispute that the likely volumes would vastly exceed the capacity of the LLWR to deal with them. It is this issue that the national LLW strategy is intended, in part, to address⁵⁴.

⁴⁶ CSD14 paragraph 8.28

⁴⁷ CSD14 paragraph 8.27

⁴⁸ CSD14 paragraph 8.28

⁴⁹ ED56d & ED60

⁵⁰ Ed65

⁵¹ LD153

⁵² ED56d

⁵³ CSD14 paragraph 8.5

⁵⁴ ED65

84. Three themes have guided the development of the national LLW strategy:

- the waste hierarchy familiar to all in the waste management field;
- the best use of existing LLW management assets; and
- the need for new fit-for-purpose waste management routes.

It is this last theme which I understand to be the main concern of the NDA as radioactive waste managers and producers (not necessarily the same thing) now prepare their LLW management plans.

85. Characterisation of the waste likely to arise from nuclear decommissioning and other sources is ongoing and may be further complicated with regard to future management routes as the outcome of the consultation on the Environmental Permitting (England & Wales) (Amendment) Regulations 2011 taking place at the time of the examination becomes clear. Nevertheless, the position of the NDA is that all routes should be available to those preparing LLW management plans since the national LLW strategy expresses no preference for one over any other. The concern is that the DPD closes off consideration of any option in Cumbria that does not involve either the LLWR or management at the principal site producing the waste. Given the role played by Cumbria historically in the management of radioactive waste nationally, NDA considers this will influence other local planning authorities and frustrate the achievement of the national LLW strategy. In that respect it is argued that the DPD would not be consistent with national policy and the option chosen not justified.

86. The role of the planning system in LLW management is set out very clearly in national policy published in 2007⁵⁵. This is specifically referenced in the national LLW strategy⁵⁶ which further states that the document should be used as guidance by all responsible for preparing and reviewing planning strategies for waste management. This must mean that it is for each local community to develop its own approach according to what it considers to be required for its own circumstances. There is no reason to infer from this that what happens in Cumbria somehow sets the national benchmark.

87. On the contrary, I have some sympathy for the arguments put by Dr Rachel Western that until the proportion of the waste likely to arise from decommissioning that can be managed at or near to the particular installation becomes clearer, identification of sites in Cumbria for various management options for LLW/VLLW, possibly arising out-of-County, is likely to influence the choices considered. This (that provision would not be made local to any nuclear installation if it was already available in

⁵⁵ LD42

⁵⁶ ED65 section 3.1.1

Cumbria) is also the essence of the social and economic argument made by the Council and Copeland Borough Council.

88. The approach set out in policy 5 could well be consistent with national LLW policy although this would need to be tested through an examination of a spatial (core) strategy. However, as already noted, there has been no spatial planning strategy process involving the local community through which policy 5 has emerged following a consideration of all the options available and referred to in national LLW strategy. This is not a criticism but an inevitable consequence of the approval of the national LLW strategy after DPD submission although, in the event, it is little different in substance from the consultation draft⁵⁷.

89. The approach and sites allocated in policy 5 are therefore not justified by a robust strategy appraisal process. For the same reason, irrespective of their own merits, it would be wrong and would cause the DPD to be unsound were either or both of the challenger sites to be included at this stage as neither would have been included in any option appraisal upon which the local community had been able to comment.

90. Equally, owing to the uncertainties referred to by the Council⁵⁸ and already mentioned above, there is little evidence to support the very large sites allocated in the DPD.

Are the identified and challenger sites deliverable?

91. The LLWR, site CO35, is already identified in the MWDF by virtue of CS policy 12. This sets out the criteria that must be met by any further proposals coming forward. It was explained that the Environmental Safety Case will address the radiological capacity of the site and the Environment Agency confirmed at the Hearing session that although the water environment at the southern end of the site was challenging, this was not a 'showstopper'. In this respect, the policy adds very little to the CS.

92. The Council identified deliverability issues with both Sellafield sites proposed⁵⁹ and has recommended that site CO32, land adjacent to Sellafield, be deleted from the DPD (**RC-S7**). Site CO36 includes land within the existing Sellafield complex and is owned by the NDA. Although invited, Sellafield Ltd did not participate in the Hearing session. Evidence for the NDA suggests that both commercial and technical site condition considerations are driving the company's LLW management plan.

93. The identification of this site appears largely aspirational with little evidence available about its capacity to accommodate LLW/VLLW in the long term. This is effectively conceded by the Council which refers to the

⁵⁷ LD157

⁵⁸ ED56d & ED60

⁵⁹ ED56d

difficulties experienced obtaining useful data on these matters⁶⁰. However, there is an existing landfill within the site with capacity for lower activity LLW⁶¹. As the Council is now proposing an urgent review of the spatial strategy in this regard (**RC-S8**) the allocation of this site is now on an interim basis only in any event.

94. The evidence is that neither Lillyhall nor Keekle Head raise insurmountable deliverability issues. Both are being promoted by waste management companies. Subject to permitting by the appropriate regulators Lillyhall could accept certain radioactive wastes under the current planning permission⁶². The issue is the considerable extension of time that would be required and the implications for the restoration of the site. However, this is more a matter for the strategy development process now to take place.

95. Similarly with Keekle Head. A detailed planning submission is with the Council and the extent to which the site specific issues are addressed will emerge from the consideration of it by the appropriate bodies. As noted by the Council⁶³ and discussed at the Hearing session, many of the issues that need to be addressed by the submitted planning application also need to be resolved if compliance with the enforcement notice is to be achieved and the site restored to the greenfield status argued by the Council.

96. In summary therefore, there are deliverability issues regarding all the sites that have been put forward through the examination with each having a more or less equal level of uncertainty associated with it. However, the LLWR (site CO35) and Sellafield (site CO36) are existing management sites and their allocation for LLW is, on balance, appropriate.

Issue 6 - Whether the Preferred Areas and Areas of Search in Policy 6 and the MSAs in Policy 7 are consistent with the CS and justified and deliverable

Introduction

97. In the main, the identified preferred areas and areas of search are extensions of existing minerals sites and have been put forward on the basis of information from the mineral operator. Their identification is therefore consistent with national policy⁶⁴. The MSAs have been derived primarily from the resource and constraints information provided by the British Geological Survey for development plan preparation⁶⁵.

98. GDCP policy DC6 is the main one against which proposals for non-energy minerals development will be assessed. The Council explained

⁶⁰ ED56d & ED60

⁶¹ SAP1 paragraph 5.104

⁶² ED60

⁶³ ED56d

⁶⁴ ND11

⁶⁵ LD46

during the Hearing sessions that, when drafted, it had been assumed that a significant number of preferred areas would be allocated in this DPD. In the event a number of those that would have been identified secured planning permission prior to its submission with the consequence that only one such area is proposed in policy 6. The remaining sites are therefore put forward as a reserve preferred area in the case of Roose sand quarry (site M27) and as a number of areas of search.

99. I have already noted that the distinction between the various categories of minerals areas described in CS paragraph 10.1 is not followed through in the GDCP and given policy effect.

Land-won sand and gravel

100. The Council's case that on the basis of the latest available information⁶⁶ there is now a landbank of some 19 years County-wide was not challenged. In County terms I endorse the Council's view that there is no requirement to identify any further sites for sand and gravel extraction. However, there are issues of local supply which must be taken into account in considering consistency with CS objectives, CS policy CS7 and CS paragraphs 10.20 and 10.21.

101. Turning first to the west of the County, existing development and future demand arising from the local authorities' regeneration initiatives and potential development at Sellafield is likely to call for continued sand and gravel supplies. At present Peel Place is the only active quarry in the area and the current permission expires in 2015. If current production levels were to be maintained the life of the quarry could be extended, subject to planning permission, to 2020. Nevertheless, planning would need to commence well before this to maintain a local landbank in the area and achieve consistency with the CS.

102. Mr and Mrs Cook, who own significant parts of the area of search proposed (site M15), argue that the process by which the site has been identified is not transparent. I have already recorded my general concern on this matter. In this case, it is particularly unfortunate given the agricultural use of the site and the importance of this land to the functioning of the dairy unit as a whole that agricultural land quality is not included among the site selection criteria although it is referred to in the text for the site in SAP8.

103. However the Council have taken account of the information provided by the mineral operator and during the Hearing sessions it was confirmed that this was at a level appropriate to the identification of an area of search. Furthermore, the allocation of land as an extension to an existing quarry, rather than as a new site, in order to maintain supplies is also consistent with the approach advocated in national policy⁶⁷.

⁶⁶ ED75

⁶⁷ ND11

104. It also emerged during the Hearing session that while Mr and Mrs Cook are the surface owners of a large part of the allocated site they own the minerals as well over only a small parcel which the Council now proposes to exclude from the DPD. Over the remainder of their surface ownership the previous owner retained an unfettered right to work the minerals subject to appropriate compensation being paid. While the Cooks' representative raised no objection to the allocation being altered to an MSA, for the reasons set out in the introduction to the Main Issues section of my report, this would have no practical effect in terms of the operation of GDCP policy DC6. On balance therefore I see no reason to alter the DPD in this respect for soundness although I endorse the change recommended by the Council (RC-E29).

105. A similar situation arises in the south of the County where Roose sand quarry (site M27) is the only active site. Permission expires in 2011 but, although there are further reserves that can be worked, the land and mineral owners are only prepared to allow extraction on annual license to ensure that other important development aspirations are not prejudiced. Holker Estates propose that a further site (site M12) be included in the DPD to ensure continuity of supply in this area.

106. A consensus emerged during the Hearing session on this matter. In substance this was:

- M27 should be upgraded to a preferred area on a revised boundary to permit an application for a short term extension of time to be considered against GDCP policy DC6
- M12 should be included as an area of search on the boundary shown in SAP8 to enable a more precise area to be defined following further borehole investigation prior to a planning application being submitted.

107. The Council has recommended these changes (**RC-S13 to RC-S18 inclusive and RC-S22**). In my view the quality of the geological evidence regarding site M12 submitted by Holker Estates during the examination process is sufficient to justify this approach which I endorse accordingly.

108. Two further sites were proposed, an extension to the Kirkhouse Quarry and a new site at Goodyhills. Both are in what is essentially the northern part of the County which is well served by existing quarries. Although it was argued that the mineral had particular qualities the Council had considered this in any event but concluded that, given the healthy landbank, this did not, on its own, justify the allocation of either site. I agree and, in the case of Goodyhills, the representor acknowledged that the case for its inclusion would be weaker if Peel Place (site M15) remained in the DPD. For the reasons set out above my conclusion is that it should.

Crushed rock

109. There is a very large landbank of permitted reserves⁶⁸ and the identification of the further preferred area or area of search proposed by the Lowther Estate Trust and others⁶⁹ at Shap Fell would not be consistent with the CS. The Council's evidence at the Hearing session was that the extension area put forward would be for general aggregate use only. The high grade industrial limestone referred to by the representor is below the existing quarry floor and subject of a planning application now under consideration.

High and very high specification roadstones

110. These aggregates are nationally and regionally important; now, Ghyll Scaur is the only operational quarry in England producing roadstone to such a high specification. There is no separate regional apportionment for these specialist aggregates but figures for reserves and sales are given for Cumbria in the Regional Aggregates Working Party Annual Monitoring Reports. The most recent⁷⁰ suggests a landbank for this mineral in excess of 30 years at current sales.

111. Two areas of search are identified and the area around Holmescales Quarry is within a large sandstone MSA. Aggregates Industries accepted at the Hearing session that the DPD was therefore consistent with CS policy 14. However, at current rates of production, Holmescales quarry will be exhausted in 2013. Moreover, as other quarries in sensitive areas such as the National Parks also come to the end of their operational life, there will be a demand which cannot be met by the remaining quarries since these will not be able to expand production for environmental and/or technical reasons.

112. It is common ground that the existing access to the quarry is not ideal⁷¹. The representor argued that there are solutions but that the mineral company require the certainty of an allocation in the DPD for these to be pursued and a preferred option worked up in detail. However, the representor acknowledged that there was no evidence before the examination as to what that solution might be.

113. GDCP policy DC6 would enable a proposal to come forward and be considered in the light of the landbank at the time. The CS monitoring matrix includes a target to maintain a 15 year landbank for these aggregates⁷² while CS paragraph 11.4 specifically refers to the need to monitor the consequences for sales from Cumbria of any reduction in output from the Yorkshire Dales National Park. In all these circumstances, I agree with the Council that there is no reason to add a further area of search to policy 6 of the DPD.

⁶⁸ CSD14 paragraph 10.13

⁶⁹ SAP7

⁷⁰ ED75

⁷¹ LD4

⁷² CSD14 table 11.1

Local building stones

114. The Council readily acknowledged the importance of Burlington Slate Ltd to the local economy and the role of Kirkby Slate and Baycliff Hags quarries to the business which is not restricted to providing stone for local purposes. While Baycliff Hags was included as site M22 at the Regulation 27 stage⁷³ and has therefore been subject to SA and consultation, Kirkby Slate was not. The representor confirmed at the Hearing session that no such process had been undertaken as part of the submissions to the examination.

115. The Council explained that CS policy 17 was worded positively and confirmed that both bullets two and three of GDCP policy DC6 would be taken into account when determining whether favourable consideration should be given to any proposal for extraction of local building stones coming forward. I endorse recommended change RC-E19 which clarifies this.

116. The representor outlined the reasons why it was important that further excavation was permitted at Kirkby Slate within the overall permission area⁷⁴. Although reassured by the Council's explanation of the policy interpretation, the Company still sought the further security that preferred area status would bring.

117. In support, reference was made to the CS aims and the mineral strategy and the argument made that not to include Kirkby Slate quarry in particular would be inconsistent with these and the DPD thus unsound. However, the CS policies are intended to enable the aims and strategy to be implemented in conjunction with the specific allocations of this DPD. CS policy 14 specifically states that MSAs only should be identified for resources for local building stones. This has been done and to do otherwise would not be consistent with the CS. The Council recommends no change to the DPD in this regard, a recommendation that I endorse.

Secondary or recycled aggregates

118. Policy 6 identifies the areas (mainly existing recycling facilities and hard rock quarries) where processing alternative aggregates would be acceptable in principle. Proposals would be assessed against GDCP policy DC4 (h). The Council confirmed that this is to be interpreted as meaning within the areas mentioned rather than on land adjacent to them.

119. L&W Wilson (Endmoor) Ltd proposed that land adjacent to the existing operation at Roan Edge should be included in the DPD. However, the nature of the allocation sought is not clear from either the written submissions or the Hearing session. An inert waste landraise site would prolong the life of the existing facility within the quarry void while an extension to that void would require further mineral extraction followed by infill. Neither approach would appear to be consistent with the CS.

⁷³ SAP8

⁷⁴ HD30 – HD32

120. The Council recognises the value of the site to the company. I agree with the representor that the wording of CS policies 8 and 9 could be taken as requiring additional inert landfill capacity to be identified to achieve the integrated network referred to although the text⁷⁵ suggests that this was not the intention.

121. On balance therefore, I consider the Council's approach to be consistent with the CS. No evidence of a County-wide need for additional inert landfill capacity was presented. Even if such a need was shown, insufficient detail about a proposed scheme for the suggested site has been provided to judge whether it would be acceptable in principle to the degree necessary for inclusion in order for the DPD to be sound. No change to the DPD is therefore necessary for soundness and the most appropriate way to take this matter forward would seem to be by way of a planning application assessed against the relevant CS and GDCP policies.

Gypsum

122. This is another mineral occurring within Cumbria that is of more than local significance and of great importance to a key local employer. Consistent with the CS, a preferred area and an MSA has been identified. The concern of local residents is that the MSA is too narrowly drawn and that both property owners and local businesses seeking to expand will be blighted as a result.

123. At the Hearing session the Council conceded that the MSA had been based on the 'A' bed information when an equally credible case could be made for using the 'B' bed data shown by the British Geological Survey⁷⁶. Recommended change RC-E20 commits to a review of the submitted MSA boundary and I endorse this approach as a pragmatic way forward.

Coal

124. Consistent with CS policy 14, the DPD identifies the shallow coal resource MSA. However, as already mentioned, any proposal for open cast coal extraction would be assessed against GDCP policy DC7 and criterion (b) makes no reference to the site needing to be within an area of search or an MSA. If a non-mineral development proposal came forward within the MSA it would be judged against GDCP policy DC9 and the benefit of prior extraction of the mineral taken into account.

125. Representations by the Coal Authority and Kier Minerals both seek assurances that the value of the coal resource will be fully considered in any proposals for regeneration of the Derwent Forest site. Kier Minerals also wish support to be given through the DPD for coal extraction as a means of, in effect, enabling development for the regeneration of the site.

⁷⁵ CSD14 paragraph 7.31

⁷⁶ LD46

126. This would not be consistent with the CS. Moreover, this issue is already addressed in the DPD⁷⁷ where, uniquely, issues about a site not actually allocated in the DPD are described. As the site is also owned jointly by the Council and Allerdale Borough Council, there would appear to be sufficient safeguards to ensure that the representors' concerns are addressed.

Coalbed Methane

127. The Council acknowledged during the Hearing sessions that it may have misinterpreted national policy regarding the identification of areas that may have reserves of coalbed methane⁷⁸. I endorse recommended changes **RC-S19 and RC-S20** which correct this error and ensure consistency of the DPD with national policy.

Issue 7: Whether the scheme in section 6 of the DPD provides a robust basis to enable measurement to take place and the need for remedial action to be identified

128. This DPD does no more than identify the specific sites and wider areas required to deliver the local community's waste and minerals development strategy. That strategy is subject to the monitoring scheme set out in the CS⁷⁹. The extent to which developments come forward as a result of this DPD is only a part of the monitoring framework for that strategy.

129. As a result of the changes proposed by the Council there are now fewer Reserve Sites for waste management facilities but those that remain are genuine alternatives that could come forward in the appropriate sequence if required. Furthermore, the Council has identified more sites than indicated by CS policy 14 and has confirmed in any event that the GDCP policies will not be applied restrictively when proposals for non-landfill development are considered. The mechanism therefore exists for other sites to come forward if overall monitoring of the MWDF indicates that inadequate numbers of sites being available for planning permission is a cause for targets being missed.

130. For minerals, most of the GDCP policies of relevance include criteria related to 'need' for the mineral concerned with an indication that planning permission may be forthcoming where a need can be shown. For aggregates, the CS monitoring scheme sets out particular targets while for other minerals it is a matter for case-by-case judgement.

131. For other matters, most particularly LLW and VLLW and the gypsum MSA, the Council has committed to an early review of the MWDF.

⁷⁷ SAP1 paragraph 5.48

⁷⁸ ND11 Annex 4, paragraph 3.21.

⁷⁹ CSD14 chapter 11

132. In all these circumstances I consider that this DPD, as part of and subject to the overall MWDF monitoring scheme, is capable of robust and effective monitoring.

Overall Conclusion and Recommendation

133. I conclude that with the changes proposed by the Council, set out in Appendix A, and the changes that I recommend, set out in Appendix C, the *Cumbria County Council Site Allocations Policies and Proposals Map* DPD satisfies the requirements of s20(5) of the 2004 Act and meets the criteria for soundness in PPS12. Therefore I recommend that the DPD be changed accordingly. And for the avoidance of doubt, I endorse the Council's proposed minor changes, set out in Appendix B except for those (RC-E13 to RC-E15 inclusive) superseded by those in Appendix C.

Brian Cook

Inspector

This report is accompanied by:

Appendix A: Post Submission Changes Proposed by Cumbria Council Required for Soundness and Appendix B Post Submission Changes Proposed by Cumbria Council: Typographic Errors/Omissions and other Minor Changes. These are in a separate document.

Appendix C (attached) Changes that the Inspector considers are needed to make the DPD sound

Appendix C – Changes that the Inspector considers are needed to make the DPD sound

These changes are required in order to make the DPD sound.

| Inspector Change No. | Policy/Paragraph/Page | Change |
|----------------------|-----------------------|---|
| IC1 | Policy 3 | Delete site AL30 as a Reserve Site and from the policy altogether. |
| IC2 | Paragraph 3.8 | Replace the penultimate sentence with 'Four First Preference sites are identified in Policy 3.' |
| IC3 | Section 5 | Delete the heading 'AL30 Innovia, Wigton and paragraphs 5.21 to 5.25 inclusive with consequent paragraph renumbering thereafter in section 5. |
| IC4 | Chapter 7 | Remove the site map for AL30. |