

Cabinet

13 February 2024

Local Development Scheme

Portfolio Holder: Councillor Simon Curry
Portfolio Holder for Climate Change and Strategic Regeneration

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Summary

This report sets out an updated programme and timetable for the preparation of the new Medway Local Plan in a Local Development Scheme. The report considers the options and risks to inform the approach to securing a robust Local Plan to manage Medway's growth to 2041.

1. Recommendation

1.1. Cabinet is requested to approve the Local Development Scheme as set out at Appendix 1 to the report as an updated programme for the preparation of the Medway Local Plan.

2. Suggested reasons for decision

2.1. To provide certainty on the timetable for the production of the new Medway Local Plan.

3. Budget and policy framework

3.1. The Medway Local Plan forms part of the statutory development plan for the area. The development plan is part of the Council's Policy Framework. The Council is preparing a new Local Plan, which on adoption will replace the current Medway Local Plan, 2003. The Local Plan is being produced in conformity with the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).

3.2. Whilst approval of the Medway Local Plan will be a matter for Full Council because it forms part of the Council's Policy Framework, approval of preparatory matters, including approval of documents such as the Local Development Scheme, is a matter for Cabinet.

- 3.3. In previous years the cost of work to deliver the Local Plan has been met from a dedicated Local Plan Reserve, however the reserve balance has now been spent. The Revenue Budget Monitoring Round 3 report, presented elsewhere on this agenda, sets out that the delivery of the Local Plan is forecast to overspend in 2023/24, and the Proposed Budget for 2024/25 also presented elsewhere on this agenda, includes an increase to the budget for the Local Plan of £165,000, reflected within the £515,000 increase to the budget for the Local Plan and Public Inquiries.

4. Background

- 4.1. The Medway Local Plan provides a strategy and policies to guide growth and achieve sustainable development. It contributes to wider ambitions for Medway – to improve the health of our communities, to care for our environment, to strengthen the economy and to provide the housing and services needed for our area. The current Local Plan was adopted in 2003 and the preparation of the new Local Plan has faced a number of challenges, resulting in delays to the adoption of the plan.
- 4.2. In Autumn 2023, the Council carried out consultation on the vision and strategic objectives for the new Local Plan in a 'Regulation 18' document. The document included an overview of the potential areas for development across Medway. The consultation provided a constructive basis for engagement in the plan, but there was limited technical content on policies and preferred sites. This is now the focus of further work on the plan.
- 4.3. Comments received to the consultation raised wide-ranging issues including transport and wider infrastructure, housing, both promotion of development sites and objections to major growth, environmental concerns and employment opportunities. Many representations noted that they considered that there was insufficient detail to engage on the Council's preferred policies and spatial strategy, together with reference to a published evidence base justifying the proposals in the plan. There were significant comments advising that a further Regulation 18 consultation would provide a more robust basis to plan making. This would be an opportunity for effective engagement prior to the publication of the draft plan and minimise risks at Examination.
- 4.4. In assessing the comments received to the Regulation 18 consultation in Autumn 2023, the Planning Service has considered it appropriate to review the programme for the preparation of the new Local Plan. The Local Development Scheme (LDS) is a statutory document that sets out the proposed development plan documents and the timetable for their preparation and revision. The current Scheme was published in October 2022.
- 4.5. In December 2023, the Secretary of State for Levelling Up, Housing and Communities wrote to Medway Council expressing concern about the lack of progress in adopting a new plan, and he directed the authority to produce a revised LDS by 12 March 2024. The Council has had discussions with officers in the Department for Levelling Up, Housing and Communities (DLUHC) on

this matter, with officers confirming that it was already the intention of the Council to update its LDS.

- 4.6. This report represents the Planning Service's work in reviewing the Local Plan programme, considering the outcomes of the Regulation 18 consultation, evidence base work and an assessment of the wider risks to the programme. This informs an updated LDS and will be used to respond to the Secretary of State's direction for the Council to revise its current Scheme.

5. Options

- 5.1. In considering a revision to the LDS, three main options have been identified:

- Progress to publication of draft plan at Regulation 19
- Provide for a further stage of consultation on the Council's proposed policies and site allocations, prior to finalising the plan's content at Regulation 19
- Align the preparation of the Local Plan to the new plan making regime, which promotes a quicker process to plan adoption.

Publication of Draft Plan at Regulation 19

- 5.2. This stage represents the Council's proposed strategy, site allocations and policies, informed by the evidence base, and consideration of representations raised in earlier consultation rounds. The draft plan is published for representations, which are forwarded to the Local Plan Inspector for consideration during the Examination process. The Council cannot make major changes to the draft plan without further consultation.
- 5.3. The draft plan should provide certainty on the development proposals, and the evidence base should demonstrate that the growth strategy is appropriate and deliverable, and major constraints can be mitigated.
- 5.4. Although much work was done on a draft plan in 2021, the spatial strategy and site allocations need to be re-assessed and supported by an updated evidence base. The loss of the HIF programme funding has had an impact, and new sites have been promoted through more recent Call for Sites and the Regulation 18 consultation in 2023. These need to be considered and consulted upon before the Council can finalise its plan.
- 5.5. There are some key outstanding challenges in confirming the development strategy for the new plan:
- Lower Thames Crossing (LTC) – the report from the Examining Authority for the Development Consent Order Examination is due to be submitted to the Secretary of State in March 2024. It is likely to be early summer when Government announces its decision, and there may be a legal challenge. This continues to create significant uncertainty for development in north

Kent, due to the wide ranging strategic impacts arising from the new scheme.

- Strategic Transport Assessment (STA) – transport capacity is recognised as a major potential constraint to development and substantial mitigations are anticipated to be required. In addition to the LTC issue, the safety and capacity issues at M2 Junction 1 have critical implications for the Medway Local Plan. The Council has commissioned a STA for the Local Plan. This will test two spatial options, noting the significant impact that the LTC would have on highway capacity. This follows the comments from National Highways in testing future plan scenarios with and without the LTC. The findings of this assessment are intrinsic to the local plan evidence base and justification for a preferred spatial strategy and allocations.
- Wider Infrastructure and Viability – the outputs from the STA will be key to the viability assessment of the local plan and the Infrastructure Delivery Plan and developer contribution policies. There are critical dependencies between these work streams.

5.6. The timelines for the decisions on the LTC and the complex STA work streams mean that the Council would be challenged to provide the necessary evidence and certainty on transport and infrastructure to finalise the spatial strategy and site allocation and policies work needed for a Regulation 19 draft plan before late 2024.

Additional Consultation Stage at Regulation 18

- 5.7. The 2023 Regulation 18 consultation was limited in technical detail. The previous Regulation 18 stages that did provide more information on potential sites and policies could now be considered quite dated, and reliance on this work could complicate a Local Plan examination. There is an option to produce a further consultation stage providing more details on policies and potential sites, in advance of finalising the draft plan for publication at Regulation 19.
- 5.8. A number of representations were made on the 2023 Regulation 18 consultation seeking an opportunity for more scrutiny and consultation on the Council's preferred strategy and policies in advance of publishing a draft plan. This approach is also supported by the Council's Sustainability Appraisal consultants, as an effective mitigation to challenges to the draft plan at Examination. In 2017 and 2018 the Regulation 18 consultations considered broad locations. In moving directly to a draft plan with site allocations, there would be more scope for challenges that could lead to a protracted or delayed Examination.
- 5.9. An additional Regulation 18 document could present options with configurations of sites, thereby providing more certainty on the proposed spatial strategy. This would help to demonstrate to the Local Plan Examination Inspector how the Council has identified preferred site allocations.

- 5.10. The consultation document would also include more detailed policies for comments, and a refresh on the vision and strategic objectives, considering feedback from the 2023 Regulation 18 consultation.
- 5.11. A further Regulation 18 consultation could lengthen the plan making process to Submission, and there would be time needed to carry out consultation and the analysis of representations. Given the more detailed technical content proposed and further information on potential allocations, the scale and range of representations would be expected to be more complex and require additional time for assessment. Delay in publishing a draft plan would also continue the uncertainty on the Council's growth strategy, leaving the area open to further speculative planning applications, and potentially have reputational impacts for the Council.

Align plan to new plan making regime

- 5.12. The government is proposing major changes to the plan making process, with the intention of speeding up the production and review of Local Plans. The Levelling Up and Regeneration Act, 2023 introduced these changes, but secondary legislation and guidance will provide the necessary details of the new system. There are transitional arrangements, with local planning authorities being able to submit draft plans prepared under the current plan making system by 30 June 2025. After this date, plans must be prepared in line with the new regime.
- 5.13. The new system intends to significantly speed up the preparation of plans, which could bring benefits. However, the details and mandatory stages and procedures for the new plan making regime are not yet in place. This means that there are likely to be some delays to progressing plans under the new system. Due the further delays entailed, this is not a preferred option for the Council. In the context of a dated Local Plan, it is a priority to progress a new plan as quickly as due processes allow.

6. Advice and analysis

- 6.1. It is considered that the option for an additional stage of consultation at Regulation 18 would better address potential legal challenges to the Local Plan (particularly through the Sustainability Appraisal), provide for more meaningful engagement in the plan preparation, and allow for greater certainty on strategic transport impacts. This strengthens the plan making process and increases confidence in producing a plan that can effectively manage growth and deliver on our aspirations and ambitions for Medway. It also recognises the dependency on the STA outputs in late 2024 to inform the publication of the draft plan.
- 6.2. A proposed timetable setting out key governance and consultation stages in the Local Plan is shown below in Figure 1. It is proposed that those Overview and Scrutiny Committees which wish to consider the Local Plan will be able to do so in June, following the Cabinet meeting. Further details are provided in the LDS set out at Appendix 1.

6.3.

| Stage | Date |
|---|-----------------------------|
| Regulation 18 Consultation Report - Cabinet | 4 June 2024 |
| Regulation 18 Consultation | 17 June to 29 July 2024 |
| Regulation 19 Draft Plan – Cabinet | 14 January 2025 |
| Regulation 19 Draft Plan – Full Council | 23 January 2025 |
| Regulation 19 Consultation | 27 January to 10 March 2025 |
| Submission Draft Plan - Cabinet | May 2025 |
| Submission Draft Plan – Full Council | May 2025 |
| Submission for independent Examination | By June 2025 |

Figure 1: Local Plan key stages timetable

6.4. The Local Plan is informed by iterative sustainability appraisals which consider the potential social, environmental and economic impacts of the draft proposals and policies. This forms part of the legal process for plan making. The content of the Local Plan will also be subject to a Diversity Impact Assessment (DIA). As a programme and timetable for the preparation of the Council’s Development Plan, it is not appropriate to carry out a sustainability assessment or DIA on the LDS.

7. Risk management

7.1. The preparation of the Local Plan is subject to a large number of risks, including the impacts of external policies and developments, and internal resourcing issues. These are considered in the table below. The recommendation to prepare an additional Regulation 18 consultation document is a key mitigation to secure a successful outcome from the Examination of the plan.

7.2. Given the correspondence from the Secretary of State in December, it is understood that the Local Development Scheme will be subject to scrutiny, and progress closely monitored. There is limited flexibility in the programme to meet the submission of the plan by June 2025, so meeting the key milestones will be critical.

| Risk | Description | Action to avoid or mitigate risk | Risk rating |
|-------------------------|---|---|-------------|
| Delays to plan adoption | Lack of certainty in managing Medway’s growth and area open to speculative development. | Need robust and effective management of plan programme, and early identification of additional risks and seek mitigation. | CII |

| Risk | Description | Action to avoid or mitigate risk | Risk rating |
|---|--|---|-------------|
| | | Publication of evidence base and details on preferred spatial strategy. | |
| Government intervention | The Secretary of State has indicated that he could further intervene in the Medway Local Plan, which could undermine local control of the appropriate strategy for Medway's growth | Submission of updated LDS that provides confidence in delivery. Ongoing engagement with DLUHC officers and Planning Advisory Service on assessment of LDS and monitoring progress. | CII |
| Slippage in updated LDS 2024 | This could lead to failure to submit under the current plan making regime, and create further uncertainty on the direction for Medway's growth. | LDS 2024 needs to be robustly informed by requirements on work streams, and effective project management and monitoring to reduce slippage, and timely identification of key issues. LDS subject to external review by Planning Advisory Service. | CII |
| Resources - financial | Budget pressures could constrain work on the evidence base and wider input to the local plan, potentially impacting on the quality of work, and opening challenges to the plan. | Planning Service to provide clarity on projected budget needs for timely consideration by senior management and members. | CII |
| Insufficient resources – Planning Service | This includes the size of the Policy team, skills and | The Policy team is now fully staffed, following a lengthy | CII |

| Risk | Description | Action to avoid or mitigate risk | Risk rating |
|---|--|--|-------------|
| | <p>experience, and competing commitments outside core Local Plan work. There is the risk of insufficient capacity to effectively carry out the necessary work.</p> | <p>period of vacant posts. A restructuring of the Planning Service has increased resilience. The Policy team will bring in support from the wider Planning Service and other corporate and external services, and consultants to progress work on the plan.</p> | |
| <p>Evidence base not effective for sound plan</p> | <p>A dated or incomplete evidence base could lead to challenges or failure at Examination.</p> | <p>Refresh of evidence base and independent review that it is fit for purpose. Identify additional work needed and present timely budget proposal to senior managers and members.</p> | <p>CII</p> |
| <p>Defining the spatial strategy and site allocations</p> | <p>There are challenges to address, including mitigating environmental and infrastructure impacts, and viability.</p> | <p>Develop a robust approach to considering spatial development options and site assessment, clearly integrated with Sustainability Appraisal (SA) and the Habitats Regulation Assessment (HRA), and informed by the evidence base, particularly on transport and viability.</p> | <p>CII</p> |
| <p>Resourcing effective consultation</p> | <p>Formal consultation at Reg 18 has time and</p> | <p>Communications plan needs to be clear on purpose</p> | <p>BIII</p> |

| Risk | Description | Action to avoid or mitigate risk | Risk rating |
|--|--|---|-------------|
| | <p>resource implications and may raise expectations that cannot be met. Assessment of consultation responses is a significant task.</p> | <p>and scope of consultation. Use of bespoke consultation software, review of assessment processes, and seeking external support on analysis if necessary.</p> | |
| <p>Successful legal challenges to plan</p> | <p>This could lead to failure at Examination. Key grounds of challenge are on the SA process and Duty to Cooperate.</p> | <p>Further work on SA and proposed additional Regulation 18 consultation will address areas of potential legal challenge. Ongoing work on Duty to Cooperate on cross border issues, and further work with neighbouring LPAs.</p> | <p>CII</p> |
| <p>Successful challenges to plan at Examination on soundness grounds</p> | <p>This could lead to failure at Examination. The main grounds of challenge are on proposals not being appropriately evidenced.</p> | <p>Critical role of the evidence base to inform decisions and need to use SA process to show how preferred policies and site allocations have been selected.</p> | <p>CII</p> |
| <p>Uncertainty on Lower Thames Crossing (LTC) and lack of mitigation for potential impacts on Medway and strategic road network.</p> | <p>The LTC is showing a significant impact on Medway and the local strategic road network, but the scheme does not deliver the wider mitigations needed. A different approach to the LTC transport modelling 'under-</p> | <p>In the absence of certainty on the LTC, the Council is testing two options in the STA, and will use an additional Regulation 18 consultation to consider potential implications from the LTC on a strategy for the Local Plan.</p> | <p>BII</p> |

| Risk | Description | Action to avoid or mitigate risk | Risk rating |
|--|--|---|-------------|
| | <p>accounted' for Medway's planned growth needs. This could result in substantially reduced capacity to accommodate development, and a reduced housing allocation in the local plan on transport constraints.</p> <p>The uncertainty on the LTC – outcomes, timing and impacts – has a huge impact on the Local Plan.</p> | <p>This also needs to be recognised as a wider strategic matter with implications for LPAs across north and mid Kent.</p> | |
| <p>Engagement with statutory consultees, prescribed Duty to Cooperate bodies, and infrastructure providers</p> | <p>There are major challenges, particularly on transport infrastructure and the strategic road network, and objections from National Highways to development.</p> <p>The Council continues to liaise with Natural England on potential for impacts on designated sites.</p> <p>Delays in statutory consultees providing advice can impact on the wider plan programme.</p> | <p>In addition to ongoing engagement at officer level and specifying key interventions in work programmes shared with the key consultees, the scale of these matters may need to be addressed at a strategic and political level.</p> | <p>BIII</p> |
| <p>Strategic infrastructure mitigations not secured</p> | <p>There are specific risks identified for transport, but also issues for wider services.</p> | <p>Focus on an effective evidence base to inform the Infrastructure Delivery Plan, and</p> | <p>BII</p> |

| Risk | Description | Action to avoid or mitigate risk | Risk rating |
|--|--|--|-------------|
| | Lack of funding/certainty on delivery could be a barrier to demonstrating sustainable development. | production of a Viability Assessment to support the developer contribution policy and provide a basis for securing external funding. If key infrastructure dependencies can not be delivered, the plan may need to restrict development levels and review phasing. | |
| Cross border impacts of development proposals from neighbouring Councils | Neighbouring LPAs are considering/ proposing development on the borough boundary, which could have implications for Medway's spatial strategy. | Need to continue cross border engagement, with specific focus on Green Belt issues and cross border transport and infrastructure impacts, which would require mitigations to be delivered and funded in Medway. | All |
| Changes in national planning policy | Revisions to national policy could require significant changes to work on the Local Plan, which could delay progress and create further uncertainty. | Ongoing review on policy changes, including consideration of NPPF 2023 update, and further consultation on the Infrastructure Levy. Need to manage LDS to ensure meet deadline for submission under current plan making regime. | BIII |

For risk rating, please refer to the following table (please **retain** table in final report):

| Likelihood | Impact: |
|---|--|
| A Very likely B Likely C Unlikely D Rare | I Catastrophic II Major III Moderate IV Minor |

8. Consultation

- 8.1. There is no requirement to consult on the Local Development Scheme. The proposed programme for the Local Plan provides for an additional stage of consultation in advance of finalising the content of the draft plan. This responds to comments raised in the Regulation 18 consultation in Autumn 2023. This approach will allow wider engagement in the preparation of the plan's policies and preferred site allocations.

9. Climate change implications

- 9.1. The Local Development Scheme sets out a timetable for the preparation of the Council's development plan. This does not directly address climate change matters. However, there are specific considerations of climate change in the wider work in preparing the Local Plan and in the determination of planning applications. The new Local Plan will include objectives and policies to mitigate and adapt to climate change, such as sustainable transport, water management, and green infrastructure. The Local Plan will be informed by an iterative Sustainability Appraisal that includes an assessment of policies and potential site allocations against a range of criteria, including any positive or negative climate change/carbon emission implications. An interim Sustainability Appraisal report will be published with the next formal stage of consultation on the emerging plan.

10. Financial implications

- 10.1. In previous years the cost of work to deliver the Local Plan has been met from a dedicated Local Plan Reserve, however the reserve balance has now been spent. The Revenue Budget Monitoring Round 3 report, presented elsewhere on this agenda, sets out that the delivery of the Local Plan is forecast to overspend in 2023/24, and the Proposed Budget for 2024/25 also presented elsewhere on this agenda, includes an increase to the budget for the Local Plan of £165,000, reflected within the £515,000 increase to the budget for the Local Plan and Public Inquiries.

11. Legal implications

- 11.1. The Local Plan forms part of the Council's policy framework and must be prepared in accordance with statutory processes. These include conformity with the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). A Local Development Scheme is required under section 15 (1) of the Planning and Compulsory Purchase Act 2004. The Secretary of State has powers to

direct a local planning authority to revise its local development scheme under section 15 (8)(b) of the 2004 Act.

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Appendices

Appendix 1: Medway Local Development Scheme, February 2023

Background papers

None