

## Decision Report - Executive



Decision Date – 4 October 2023

Forward Plan reference number: FP/23/07/01

Key Decision – Yes

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### **Local Development Scheme and the establishment of a Planning and Transport Policy Sub-Committee of the Executive**

Executive Member(s): Ros Wyke - Lead Member for Economic Development, Planning and Assets

Local Member(s) and Division: n/a

Lead Officer: Paul Hickson – Service Director Economy, Employment and Planning

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#### **Summary**

1. A Local Development Scheme (LDS) is required under section 15 of the Planning and Compulsory Purchase Act 2004 as amended. This must specify (among other matters) the development plan documents which, when prepared, will comprise part of the development plan for the area including the Local Plan, Minerals Plan, Waste Plan, and Neighbourhood Plans. These documents comprise the plans for land use across Somerset. The LDS may also reference the Local Transport Plan.
2. A Planning and Transport Policy Sub-Committee would oversee and monitor the review of the development plans and local transport plan and take delegated decisions on behalf of the Executive to ensure a more streamlined timetable for producing these documents. It will also facilitate the Council to ‘make’ Neighbourhood Plans within the statutory time period of 8 weeks from the date of the referendum.

#### **Recommendations**

3. The Executive:
  - i) Approves the Local Development Scheme (Appendix 1) as the Council’s work programme for delivering the Development Plan; and

- ii) In consultation with the Lead Member for Economic Development, Planning and Assets, delegated authority is given to the Service Director for Economy, Employment and Planning to agree any necessary final amendments prior to its publication; and
- iii) Agrees to establish a Planning and Transport Policy Sub-Committee of the Executive with Terms of Reference as set out in Appendix 2

### **Reasons for recommendations**

- 4. To meet the statutory requirement to maintain an up-to-date Local Development Scheme.
- 5. To ensure that formal decisions at key stages of development plan production and other planning policy and transport guidance can be made as soon as possible to maintain their production timetable as set out in the Local Development Scheme.

### **Other options considered**

- 6. There is no alternative option to meet the statutory requirement.

### **Background**

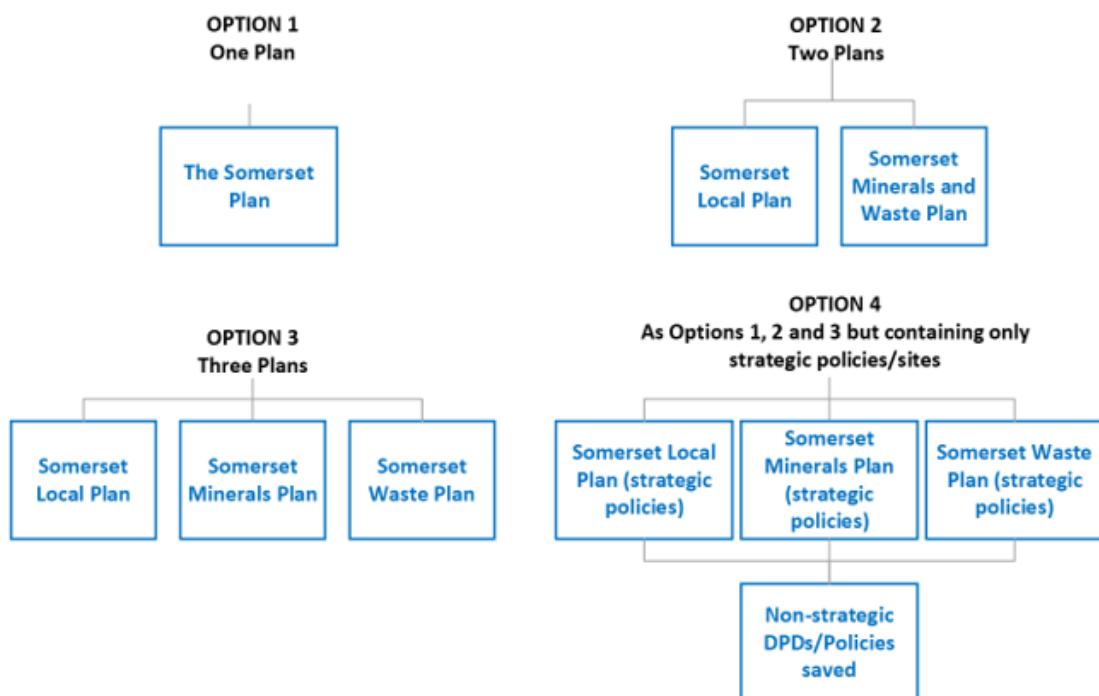
#### **Local Development Scheme**

- 7. The scope and timeline for the preparation of development plan documents is set out in the Local Development Scheme (Appendix 1). The Council has a statutory responsibility to produce the Local Plan, Minerals Plan and Waste Plan. The LDS forms the agreed work programme for the Local Planning Authority (the Council area excluding Exmoor National Park). The LDS must also include details and timescales of the Mendip Site Allocations Review as agreed at Executive on 10 July 2023.
- 8. Development plan documents set out the vision and framework for the future development of the area. Until such time as a new Local Plan for Somerset is adopted, existing Local Plans remain in place for the former district areas. The existing Minerals Plan and Waste Core Strategy remain in place until they are replaced, or they are retained if a review confirms the policies are up to date and effective.

9. Under the structural change order the Council has a requirement to adopt a development plan by 1 April 2028 covering the whole of the Local Planning Authority's area. There may be sanctions for Somerset Council if this deadline is not met which would most likely take one of two forms: potentially a reduced New Homes Bonus provided to Councils who do not have an up to date Development Plan in place; or intervention by the Secretary of State to take over Plan-making
  
10. Alongside officer's expertise, DAC Planning and Arup were commissioned to provide critical friend advice on the approach to producing a Development Plan for the Council. With the consultant's extensive experience in supporting Local Authorities in plan-making specifically their work for the Planning Advisory Service they advised on scoping and structuring the Development Plan, risks, associated evidence base and resourcing required, costing evidence base and providing a realistic timetable for the Local Development Scheme. During October 2022, officers and DAC/Arup held a workshop for key Members to discuss findings. Outcomes and observations from the workshop informed the consultants recommendations and the local development scheme now proposed.

*The Structure of the Development Plan*

11. Officers and the critical friend report considered options for the Development Plan structure in Somerset. Four main options were considered:



12. Officers and the critical friend recommendation is Option 3 where the Local Plan is produced independently of the Minerals and the Waste Plans as different strands of the wider land use plan for Somerset. The production of the plans will share a common evidence base and will integrate with the Local Transport Plan to ensure all land use matters are considered strategically and collectively. This recommendation is based upon the following factors:
  - Plans combining the different elements would take an extended amount of time. Having separate plans ensures that across the new authority area there is an up-to-date policy position (reducing the risks of speculative housing development and 'planning by appeal') at the earliest achievable time and that a long term strategy to address the phosphates issues can be put in place. Given this pressing need, there is a risk that a single issue in one plan could derail or significantly delay the adoption of the development plan as a whole. Separate plans means that each can be updated independently of each other.
  - Representatives of the wider industry have expressed a clear preference for taking forward separate Minerals and Waste Plans to ensure that sufficient priority being given to each issue.
  - Such an approach better reflects the direction of Government reform which indicates that Minerals and Waste Plans should be kept separate from Local Plans.
  - Being a unitary authority ensures that the Local Plan, Minerals and Waste and Transport planning teams will work closely and collaboratively to ensure key strategic matters are fully considered across the documents.
13. Plans that cover strategic and non-strategic matters ensure that a full suite of up-to-date policies is in place at the earliest achievable date and avoids key development management policies being adopted at a much later date. The proposed planning reforms may introduce some standardised development management policies at a national level. However, at the current time the Council must operate under the current planning system and it will be some time until any national development management policies are published for consultation and then adopted.
14. The structure of the Development Plan will be kept under review in future years.

#### *The Somerset Local Plan timetable*

15. The deadline of 1 April 2028 for the Development Plan to be in place (as set out in the structural change order creating the new authority) is incredibly

challenging. Officers worked with the critical friend to establish how this timetable could be met. In December 2022, an ambitious indicative timetable was drafted that anticipated that an up-to-date Local Plan could be in place by April 2028. This timetable assumed that adequate budget and resources were in place and that a streamlined approach to plan production was followed.

- 16. Officers recommend that the Council adopts a streamlined plan making process where engagement with technical stakeholders and community groups occurs at an early stage to consider issues and potential policy approaches. This would then be followed by one single round of formal consultation (Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012). This consultation would be on the draft Local Plan rather than a less formulated ‘options’ style document.
- 17. This approach is the only realistic way to shorten the standard Local Plan process whilst still complying with the regulatory stages. The Local Plan timetable therefore proposes taking this approach to deliver the Local Plan as early as possible given other mitigating factors as set out below:

Table 1: The proposed Local Plan timetable

Milestones	Dates
Commence project planning and evidence gathering	Apr 2023
Early engagement with internal and external stakeholders and further evidence gathering	Apr 2024 – Feb 2025
Regulation 18 consultation on Draft Plan	Apr 2025 - Jun 2025
Regulation 19 publication	Oct 2026
Submission for Independent Examination	Mar 2027
Inspector’s Report	Feb 2028
Adoption	March 2028

- 18. The Government has proposed reforms to plan-making emerging through the implementation of the Levelling Up and Regeneration Bill, including the proposed introduction of a 30-month timescale for plan production. The proposals for the implementation of these provisions are currently out to consultation. This closes on 18 October 2023 with proposals for the relevant regulations timetabled for Autumn 2024. At present the Council is expected to operate under the current plan making system.

## *Mendip Site Allocations Review*

19. The LPA is required to undertake a partial update of the Mendip Local Plan Part II (sites and policies). This involves reconsideration of the provision of 505 homes as a result of five sites which were deleted from the Plan as a result of a Judicial Review and their submission for examination. The key milestones are set by a High Court Order made on 14 July 2023 and must be included in the LDS. The scope of this work is limited to identifying sites for the 505 dwellings which are deliverable within the Mendip area and in the Plan Period to 2029. Given the need to bring forward a Somerset-wide development plan, a wider exercise for the East area (e.g. more housing or review of strategic policies) is neither warranted or justified. The Council will notify stakeholders of the scope of the update following agreement of the LDS.
20. The milestones in the Court Order require consultation on the preferred options by 31 December 2023, Publication under Regulation 19 of proposals by 31 March 2024 and submission to the Planning Inspectorate by 1 July 2024.

## *Climate change policies*

21. Addressing both the climate and ecological emergencies is at the heart of the Council's decision making. The Council Plan 2023-27 states *"As we develop our new Local Plan, we will consider introducing new policies and work with developers to create sustainable new places and communities to the best environmental standards possible."* The Local Plan is central to meeting the Council's climate targets as it cuts across all sectors in particular energy, transport and the built environment. This is reflected in the Climate Emergency Strategy with one outcome being *"All new developments (new homes and non-residential) will be highly energy efficient, at least zero carbon and climate resilient from as early a date as possible"*. It is only the Local Plan that can ensure this outcome is delivered.
22. Whilst the Local Plan wouldn't be adopted until March 2028, its emerging policies gain further weight as it progresses through its production stages. Paragraph 48 of the National Planning Policy Framework sets out that decision-takers may give weight to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies, and their degree of consistency with policies in the [National Planning Policy Framework](#). The publication stage (Regulation 19) is anticipated for Oct 2026. Depending on the factors set out in the National Planning Policy

Framework, potentially some material weight could be given to the emerging policies in determining planning applications.

23. The Council is keen to adopt policies to ensure new developments are built to the best environmental standards as soon as practicable. One suggestion has been for the Council to produce a Climate Change Development Plan Document (CCDPD) in advance or alongside the production of the Local Plan.
24. However within the existing resource base of the Council's planning service, the production of a CCDPD would have serious implications for the delivery of the Local Plan. As explained under Financial and Risk Implications, the Local Plan is already significantly under resourced so by diverting resources away from the Local Plan to a CCDPD is likely to mean the Local Plan timetable extending by at least a further 3-5 years and thereby increasing the risk of intervention by the Government and leaving Somerset without an up-to-date Local Plan for a longer period of time. As an initial estimate the production of a CCDPD may cost the Council at least a further £1m (evidence base, examination and additional staff resources).
25. Somerset Council does not have an up-to-date Local Plan so has a statutory duty to produce a Local Plan. The Council may face intervention by the Government if the Local Plan is not adopted by 1 April 2028. In 2019, intervention by the Secretary of State took place at two Local Planning Authorities (Wirral Council and Thanet District Council) for failing to progress with their Local Plan under powers in Section 27(2)(b) of the Planning and Compulsory Purchase Act 2004. For this reason, to manage risk to the Council it is suggested that the Local Plan must necessarily take priority over a CCDPD. The Council does not have a statutory duty to produce a CCDPD.
26. Cornwall Council and Warwick District Council have been cited as delivering a separate climate DPD. However, Somerset Council is in a very different position with 5 adopted Local Plans covering the Local Planning Authority area containing different policy requirements from each other. The most complex issue for Somerset Council in the absence of a single Somerset Local Plan, would be robustly evidencing development viability in all five Local Plan areas based upon differing adopted Local Plan policies.
27. Some Local Plan areas are Community Infrastructure Levy charging areas with varying levies. Each area seeks different S106 financial contributions and have different levels of affordable housing contribution. The technical evidence required to navigate this information into a set of policy options for climate

change requirements would be a highly complicated and a lengthy process including a costly viability study from expert consultants. It may require decisions to be taken that result in different climate change policy requirements for each Local Plan area and may create pressure on different policy requirements/contributions in each of the 5 Local Plan areas. Given this complexity, it would be very challenging to deliver a robust DPD within 3 years.

28. It is important to recognise that a CCDPD would not necessarily mean policies being adopted any sooner than if they were delivered as part of the Local Plan. This is because the CCDPD would need to follow exactly the same production stages as set out in legislation with limited opportunity for streamlining the timetable.
29. For the reasons set out, Officers do not recommend progressing a Climate Change DPD. Climate change policies should be included within the Local Plan.
30. Rolling out the *Climate Positive Planning: Interim Guidance Statement on Planning for the Climate and Ecological Emergency* to the whole of Somerset (it only applies to the former Somerset West and Taunton area) was considered as an option. The Climate Positive Planning statement is not planning policy but is a technical explanatory document identifying how the requirements of adopted planning policies may be viewed in assessing development proposals. It cannot require more than is set out in adopted policies but seeks to ensure that the best outcomes are achieved from adopted policies.
31. The rollout of the statement would involve a detailed assessment of the relevance and justification of planning policies within the other adopted Local Plans (Sedgemoor Local Plan, Mendip Local Plans Part I and Part II and South Somerset Local Plan), further consideration of any changes in national policy, and commentary on specific issues emanating from the consideration of the Climate Emergency as a material consideration. Production would also involve one round of consultation.
32. If one officer was working on it full time, the rollout is estimated to take 1 year to produce and adopt. This officer would need to be taken off the Local Plan. Resources would also be required from Governance teams. For these reasons, Officers do not recommend rolling out Climate Positive Planning as the impact on the Local Plan would be significant given it is already under resourced.



### *Factors that could impact the Local Plan timetable*

33. Plan making, particularly over such a large and varied geographical area, is inherently a complex and time consuming process, and there is potential for unforeseen events to delay progress. Issues that may increase the risk of not meeting the timetable to produce the Development Plan include:
- The Mendip Local Plan Part II Site Allocations Review must be progressed immediately and following a very challenging timetable otherwise the Council may be found in contempt of court.
  - Budget constraints leading to resource pressures and issues of retention and recruitment of staff given the national shortage of planning professionals and other built environment specialists.
  - The requirement for any Main Modifications of the Plan required by the Inspector following examination of the Plan and consultation and/or where the Inspector requires further work, evidence base and consultation.
  - Ensuring governance and consultation processes are effective.
  - The final detail of the reforms to plan-making emerging through the implementation of the Levelling Up and Regeneration Bill, including the proposed introduction of a 30-month timescale for plan production.
  - Potential for changes in government and government priorities over the course of plan production.
  - The timing of a Phosphates Mitigation Strategy to ensure integration with Local Plan production.

### *The Minerals Plan and Waste Local Plan timetables*

34. Officers will undertake a review of both the Minerals Plan and Waste Core Strategy in the form of an assessment to understand which policies may be out of date for the purposes of decision making or where circumstances may have changed and whether or not the policies in the plan continue to be effective in addressing the specific local issues that are identified the plan. The Minerals Plan review has commenced and is anticipated to be completed in 2023 following which a formal decision will be required on whether, and to what extent, an update of the policies is required. The Waste Plan review will commence after the Minerals Plan review has been completed.

## *Local Transport Plan*

35. Whilst recognising the Local Transport Plan (LTP) is not part of the Development Plan, the high-level timetable of the LTP production will be included within the Local Development Scheme for information as there is a close interrelationship between the documents.

## **Planning and Transport Policy Sub-Committee**

36. Given the wide breadth of service delivery within the Council, the planning service will be a less significant part of the unitary council business compared to a district council. The Executive Committee of the Council will have a significant numbers of items to deal with and subsequently planning policy, including meeting the requirements for the timescale imposed by the High Court on the Mendip review of site allocations, Neighbourhood Plans and infrastructure matters may struggle to be accommodated on the Forward Plan in a timely manner. Approving Local Plan formal consultation documents (Regulation 18) and the publication version (Regulation 19) are a function of the Executive. Following the receipt of the Inspector's Report, the Executive would make a recommendation to Full Council for adoption (Regulation 26).
37. The significant number of items anticipated for the Executive could potentially lead to delays in decision making in the development plan process and infrastructure funding. The production of development plan documents must follow the stages and processes set out in legislation. This report has set out the already incredibly challenging Local Plan timetable so any delay in decision making may cause significant problems to the timetable. Furthermore, the Council must meet the statutory timetable for making Neighbourhood Plans. The Council has only 8 weeks starting the day after a 'Yes' vote at the referendum to decide whether or not to 'make' the Neighbourhood Plan.
38. Given the close interrelationship and shared evidence base of the Development Plan and Local Transport Plan, the Sub-Committee is proposed to also make formal decisions on the Local Transport Plan and other transport policy guidance.
39. Items that are anticipated to be brought to the Sub-Committee during the next 6 months include:
  - Mendip Local Plan Part II Site Allocations Review - Approval of Reg 18 consultation on Preferred Site Options
  - Community and engagement strategy for the Somerset wide Local Plan

- Outcome of the review of the Minerals Plan
  - Local Transport Plan – draft for consultation
  - The making of Neighbourhood Plans including: Ilminster; Ruishton and Thornfalcon; Kingston St Mary; and Wells
  - Agree infrastructure priorities and approve Community Infrastructure Levy and s106 spending priorities
40. Appendix 2 sets out the Terms of Reference for the Planning and Transport Policy Sub-Committee.
41. Scrutiny would have an opportunity to engage with the development of the Local Plan through engagement on an ongoing basis and as part of the formal consultation process.
42. A Consultation and Engagement Plan is being developed which will consider how best to facilitate wider member engagement in the development of the Local Plan.

### **Links to Council Plan and Medium-Term Financial Plan**

43. The recommendation of approving the work programme will align with the Council Plan 2023-27 vision and priorities, in particular the priority for *A Greener, More Sustainable Somerset*. Furthermore, this report and recommendations are consistent with the emerging Council Business Plan, in particular adopting and delivering a new Local Plan and reflecting the Council's Climate Emergency Strategy. The Local Plan is one of a suite of strategic documents the Council will need to produce that support and complement each other. Using the vision and priorities set out in the Council Plan provides a starting point for developing agreed goals and ambitions in partnership with the community, businesses and the environment at the centre.

### **Financial and Risk Implications**

44. The work identified within the Local Development Scheme will be delivered within agreed budgets. If there are resource constraints moving forward, the Local Plan timetable may need to be extended, in which case the Planning and Transport Policy Executive Sub-Committee will be asked to approve a revised Local Development Scheme at a later date. A Local Development Scheme can be updated at any time.

45. Without approval of the Local Development Scheme work programme, officers have identified the following risks:
- i) It would suggest that the Council is not actively progressing the Development Plan to the timetable required in the Structural Change Order which may create a reputational risk and potential risk of sanctions from the Government.
  - ii) It is a statutory requirement for the Council to have an up-to-date Local Development Scheme and it is critical to demonstrate to the High Court that the Council is progressing the partial review of the Mendip LPP2 in accordance with the High Court Order. If the Council fails to approve the Local Development Scheme, the Council may be found in contempt of court.
  - iii) A lack of a work programme creates uncertainty for local communities, businesses and investors in relation to the spatial strategy for new development and infrastructure provision in Somerset.
46. The recommendations in this report will mitigate a high risk.

<b>Likelihood</b>	<b>1</b>	<b>Impact</b>	<b>3</b>	<b>Risk Score</b>	<b>3</b>
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### **Legal Implications**

47. The Council's Constitution describes how the Council will discharge its responsibilities, including responsibilities for the preparation and adoption of the Local Plan, which must be considered and endorsed by Full Council, prior to adoption.

### **HR Implications**

48. There are no immediate HR implications.

### **Other Implications:**

### **Equalities Implications**

49. The recommendation is to approve a work programme of a statutory document and as such there are no direct Equalities implications of this report. The individual Development Plan documents referred to in the work programme will undergo their own Equalities Impact Assessment as part of their development in due course.

### **Community Safety Implications**

50. There are no immediate Community Safety implications.

### **Climate Change and Sustainability Implications**

51. The approval of the Local Development Scheme provides for the delivery of the Development Plan which in turn will play a leading role in delivering on the Council's Climate Emergency Strategy.

### **Health and Safety Implications**

52. There are no immediate Community Safety implications.

### **Health and Wellbeing Implications**

53. There are no immediate Health and Wellbeing implications.

### **Social Value**

54. There are no immediate Social Value implications.

### **Scrutiny comments / recommendations:**

55. This item was presented to Scrutiny Committee (Climate and Place) on 20<sup>th</sup> September 2023. Members considered that climate change policies should be a priority and that rather than waiting for 5 years for completion of the Local Plan that there was a need for a separate Climate Change DPD that could be come into effect before this. Particularly as lessons could be learnt from work already done by other authorities such as Bath & North East Somerset, Cornwall and Warwick.

56. Scrutiny resolved:

- That a Climate Change Development Plan Document be created to advance the Council's climate emergency objectives, in particular zero carbon energy standards, new developments and renewable energy generation siting. To be separate from the Local Plan and to an earlier time scale to reflect the climate emergency declaration.

## Background Papers

57. None.

## Appendices

- **Appendix 1:** Local Development Scheme 2023
- **Appendix 2:** Terms of Reference of the Planning and Transport Policy Sub-Committee

## Report Sign-Off (if appropriate)

	Officer Name	Date Completed
Legal & Governance Implications	David Clark	31/8/23
Communications	Chris Palmer	Sent 25/8/23
Finance & Procurement	Nicola Hix	7/9/23
Workforce	Alyn Jones	31/8/23
Asset Management	Oliver Woodhams	25/8/23
Executive Director / Senior Manager	Mickey Green	25/8/23
Strategy & Performance	Alyn Jones	31/8/23
Executive Lead Member for Economic Development, Planning and Assets	Cllr Ros Wyke	1/9/23
Executive Member for Transport and Digital	Cllr Mike Rigby	1/9/23
<b>Consulted:</b>		
Local Division Members	n/a	
Opposition Spokesperson	Cllr Mark Healey MBE Opposition Lead member for Prosperity, Assets and Development Cllr Diogo Rodrigues Opposition Lead member for Transport and Digital	12/9/23
Scrutiny Chair	Cllr Martin Dimery Chair of Scrutiny Committee – Climate and Place	12/9/23