

Title: Net Zero Carbon Development Plan Document (DPD) Update  
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 01926 456203)  
 Portfolio Holder: Councillor Kennedy (Climate Change) and Cllr King  
 (Place)  
 Wards of the District directly affected: All

<b>Approvals required</b>	<b>Date</b>	<b>Name</b>
<b>Portfolio Holder</b>	05.06.23	Cllr James Kennedy (Climate Change) and Cllr Chris King (Place)
<b>Finance</b>	02.06.23	Andrew Rollins
<b>Legal Services</b>	02.06.23	Ross Chambers
<b>Chief Executive</b>	02.06.23	Chris Elliott
<b>Director of Climate Change</b>	02.06.23	Dave Barber
<b>Head of Service(s)</b>	02.06.23	Philip Clarke
<b>Section 151 Officer</b>	02.06.23	Andrew Rollins
<b>Monitoring Officer</b>	02.06.23	Andy Jones
<b>Leadership Co-ordination Group</b>	19.06.23	
<b>Final decision by this Committee or rec to another Cttee / Council?</b>	Yes (on these recommendations; however, adoption of the DPD is a matter for Council to consider)	
<b>Contrary to Policy / Budget framework?</b>	No	
<b>Does this report contain exempt info/Confidential? If so, which paragraph(s)?</b>	No	
<b>Does this report relate to a key decision (referred to in the Cabinet Forward Plan)?</b>	Yes, Forward Plan item 1,363 – scheduled for 5 <sup>th</sup> July 2023	
<b>Accessibility Checked?</b>	Yes	

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## Summary

This report provides an up-to-date position on the progress of the Net Zero Carbon Development Plan Document (DPD), currently under Examination by the Secretary of State. It also seeks decisions relating to the current public consultation on the document and next steps.

## Recommendations

- (1)** That Cabinet notes the latest position and progress on this planning policy document, since Council last considered a report relating to it on 7<sup>th</sup> September 2022.
- (2)** That Cabinet endorses the Main Modifications as set out in the current Main Modifications consultation and confirm that they do not wish to make any representations to that consultation.
- (3)** That Cabinet notes the production of a Supplementary Planning Document (that is already included within the Council's Local Development Scheme) to assist with the smooth implementation of the DPD; and gives delegated authority to the Head of Place, Arts and Economy and the Portfolio Holders for Climate Change and Place to agree on a version of the Supplementary Planning Document that the Council will consult upon and agree the dates for that consultation; and that Cabinet notes that the SPD will ultimately come before them for their consideration as to whether to adopt it.
- (4)** That a further £35,000, in addition to the £95,000 agreed by Cabinet in August 2022, is set aside from the Planning Appeals Reserve to cover costs associated with consultancy work and the Examination.

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## 1 Reasons for the Recommendation

### 1.1 Background/Information

- 1.1 At its meeting on 10<sup>th</sup> August 2022, Cabinet agreed to the submission of the Net Zero Carbon Development Plan Document (DPD) to the Secretary of State for its Examination alongside a schedule of proposed revisions arising from the second of two public consultations on the emerging policy document.
- 1.2 Subsequently, Council endorsed the submission of the document on 7<sup>th</sup> September 2022.
- 1.3 On 17<sup>th</sup> October 2022, the DPD was submitted to the Secretary of State (through the Planning Inspectorate (PINS)). In order to submit the DPD, the Council were also required to appoint a Programme Officer to assist the Inspector in the administration of the examination.
- 1.4 On 7<sup>th</sup> November 2022, PINS appointed Mr. A McCormack as the Inspector to hold an independent examination of the DPD.
- 1.5 Mr. McCormack wrote to the Council on 8<sup>th</sup> December 2022, confirming that he had undertaken an initial review of the Plan, the supporting evidence and representations made on it prior to its submission and from this was satisfied that the examination of the Plan could progress.

- 1.6 Council officers and Mr. McComack engaged in further correspondence and four days of public Examination hearing sessions were arranged commencing on 7<sup>th</sup> March 2023.
- 1.7 The Council were represented at the hearing sessions by Council officers alongside specialist consultants that have supported the production of the DPD. Other interested parties also attended the hearing sessions.
- 1.8 On 30<sup>th</sup> March 2023 Mr. McCormack wrote to the Council outlining the next steps for the DPD Examination. He also praised the Council's management of the sessions stating "*...I would like to thank the Council's Team for the way in which the hearing sessions were approached, arranged, and conducted. This enabled the hearing sessions to take place as smoothly, effectively, and efficiently as possible and for that I am grateful*".
- 1.9 In his letter, the Inspector requested further information to be submitted and indicated that Main Modifications to the DPD will be required for reasons of 'soundness' in accordance with Paragraph 35 of the National Planning Policy Framework (NPPF). As such, it would be necessary to undertake a period of public consultation on the modifications.
- 1.10 Mr. McCormack provided an indicative timetable for the next stages of the Examination that would see his final report being anticipated by the end of September 2023 (the Inspector has subsequently revised this to 'end of October 2023').
- 1.11 Following a response from the Council to Mr. McComack's letter of 30<sup>th</sup> March in which he had requested additional information, he subsequently wrote to the Council again on 12<sup>th</sup> May 2023 confirming that he was satisfied with the content of additional documents that the Council had provided. A Schedule of Proposed Main Modifications (and minor changes, referred to as Additional Modifications) were produced by the Inspector and asked for further work to be completed by the Council by 22<sup>nd</sup> May 2023.
- 1.12 On 22<sup>nd</sup> May 2023 officers wrote to the Inspector with a final list of proposed Main Modifications, Final Schedule of Additional Modifications, a Sustainability Appraisal/Habitat Regulations Assessment update, and a composite version of the DPD showing all proposed modifications indicated in the schedules.
- 1.13 On 5<sup>th</sup> June 2023, the Council commenced a statutory 6-week Main Modifications consultation that will run until 17<sup>th</sup> July.

#### **1.14 Main Modifications**

- 1.15 In assessing a Local Plan (including Development Plan Documents), the Inspector has to be satisfied that the Plan has been prepared in accordance with legal and procedural requirements and whether it is sound. Paragraph 35 of the NPPF sets out the tests of soundness and Plans are 'sound' if they are:
  - a) Positively prepared;
  - b) Justified;
  - c) Effective; and
  - d) Consistent with national policy.
- 1.16 It is common for the Inspector to identify a number of Main Modifications required in order to meet the tests of soundness. In this case a total of 20 Main Modifications have been identified.

- 1.17 Whilst identified as Main Modifications, some of the modifications were indeed put forward by Officers as Minor Modifications to the DPD and officers do not consider that the changes significantly alter the policies and thrust of the DPD that was submitted for Examination in October 2022.
- 1.18 Main Modifications include the following amendments and are required for reasons of soundness to make the DPD justified and effective:
- Clarification in text for each policy how the DPD policy relates to existing Local Plan policies.
  - Outlining measures taken to create a carbon market for Warwickshire, which will be the preferred carbon offsetting mechanism.
  - Factual clarification that the DPD relates to regulated operational energy and does not include unregulated energy and associated emissions.
  - Clarification that Policy CC3 of the Local Plan is being expanded upon and that requirements in relation to BREEAM standards are not superseded.
  - Signposting where information on the content of an Energy Statement can be found.
  - Clarifying the relationship with CIL and that the Carbon Offset fund will be separate, and the carbon savings separately monitored.
- 1.19 17 Additional Modifications of a more minor nature are also proposed, and the changes are primarily for purposes of factual clarification.

## **1.20 Main Modifications Public Consultation**

- 1.21 Officers have collaborated with the Inspector to arrive at the final schedule of modifications and are comfortable with the proposed modifications.
- 1.22 As highlighted in paragraph 1.13, a public consultation on the Main Modifications has commenced and will run until 17<sup>th</sup> July 2023. Only representations relating to the Main Modifications can be considered through the consultation, thus comments on the Additional (minor) Modifications or general comments relating to the document or aspects of it falling outside of the Main Modifications cannot be considered.
- 1.23 Three appendices supplement this report and relate to documentation that forms part of the public consultation. They are:
- Appendix 1 – Schedule of Main Modifications
  - Appendix 2 – Schedule of Additional Modifications (minor changes)
  - Net Zero Carbon DPD – Track Change version identifying Main and Additional modifications.
- 1.24 As part of the consultation, an addendum has been provided to the Sustainability Appraisal/Habitats Regulations Assessment. This concludes that overall, the previous findings of the Sustainability Appraisal/Strategic Environmental Assessment and also those of the Habitats Regulations Assessment remain relevant and valid in light of the proposed Main Modifications.
- 1.25 Recommendation 2 of this report seeks Cabinet’s support for the Main Modifications and confirmation that they do not wish to make any representations on the consultation.

- 1.26 Theoretically, it would be possible for the Cabinet to raise objections to these modifications. However, in considering whether to do this or not, the following points should be taken into account:
- Issues relating to each of the modifications have been rigorously examined during the Examination in Public hearings. The Main Modifications have been advanced by the Inspector as he considers they are necessary in order for him to find the document 'sound'. Without the amendments, the Council would be unlikely to be able to proceed and adopt the document.
  - If the Cabinet chooses to raise new arguments or proposals, this opens up the risk that the Inspector will need to give these proposals consideration which in turn may require him to re-open the hearings and/or require a further period of consultation. This would adversely impact the timing of the adoption of the DPD.
- 1.27 In this context, it is recommended that the Cabinet endorses the Main Modifications and does not make any representations regarding the modifications. However, alternative options are set out in Section 2 below.

### **1.28 Next Steps**

- 1.29 Following the end of the public consultation, officers will collate the responses into a schedule and provide them to the Inspector for his consideration. It is likely that this will be undertaken before the end of July 2023.
- 1.30 The Inspector has indicated that it would be reasonable to anticipate the issuing of his Final Report before the end of October 2023. If the Inspector finds the DPD to be sound, for decision makers (i.e., Development Management and Planning Committee) to give it full planning weight and for it to form part of the Development Plan for the District, Council must take the formal decision to adopt the DPD.
- 1.31 On the basis of when the Inspector's Final Report is anticipated, the Council meeting on 15<sup>th</sup> November may be appropriate for taking the decision whether to adopt the final DPD. If the timing of the receipt of the Inspector's Final Report does not allow for this, then Officers will liaise with Committee Services and Members to find a suitable alternative to enable the adoption of the DPD at the earliest opportunity.
- 1.32 In order to assist the implementation of the DPD policies, officers with the support of our consultants, are producing a Supplementary Planning Document to help advise Development Management colleagues and applicants as to what will need to be produced and submitted to address the policy requirements.
- 1.33 The need for supporting guidance was identified in a Cabinet Report on this subject on 10<sup>th</sup> August 2022 and finances were identified to deliver the guidance. It was subsequently also included in the Council's current Local Development Scheme in December 2022. Work has commenced on the production of the guidance and the importance of it was apparent at the Examination Hearing Sessions with the Inspector making it clear that he recommends that the Council produce such guidance.
- 1.34 In previous reports relating to the DPD it has been highlighted that additional expertise may be required to assist in the smooth implementation of the DPD, in particular to assess the technical information that will be submitted as part of planning applications. External funding opportunities have been explored, although ultimately unsuccessful. Therefore, officers propose to create a new

permanent post for somebody to provide the technical expertise required. This is being factored into the Medium-Term Financial Strategy (MTFS) and will soon go through the HAY Panel process.

- 1.35 Officers are aware that decision makers and applicants will be keen to understand what weight can be attached to the policies in the DPD prior to its adoption. This is a matter of judgement and guidance on the matter is provided in the NPPF (paragraph 48), which states:

*Local planning authorities may give weight to relevant policies in emerging plans according to:*

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).*

- 1.36 Upon production of the Inspector's Final Report the weight that can be attached to the DPD will be significant. This reflects the fact that the Plan will be at a very advanced stage, has been subject to significant public consultation, and the representations to it will have been considered, and ruled upon, by an independent Inspector.
- 1.37 However, if no significant issues are raised through the Main Modifications consultation, given the advanced stages of the DPD, the lack of unresolved objections and our belief that the DPD is consistent with the NPPF, it is considered that some weight, albeit less than substantial, could be given to the policies in the DPD. That said, it should also be noted that applications will have been submitted prior to the adoption of the DPD and applicants will not have the benefit of the supporting guidance to assist them.
- 1.38 In the period between now and the anticipated adoption of the DPD, the Council's Development Management officers are ensuring that the DPD is referred to in pre-application discussions they have with potential applicants.

## **2 Alternative Options**

- 2.1 Alternative Option 1 (relating to Recommendation 2): Cabinet could choose to not proceed with the Net Zero Carbon DPD and withdraw it from Examination. However, given the significance of the DPD to the Council's Climate Emergency Action Plan and the cross-party support it has received to date and the time and cost that has been incurred in producing the DPD, this is considered an unwise and retrograde decision. The Council only recently, in October 2022 took the decision to submit the DPD for Examination and even more recently in December 2022 committed to the continued work on the DPD through approving an updated Local Development Scheme that includes the DPD as a priority.
- 2.2 Alternative Option 2 (relating to Recommendation 2): Cabinet could choose to make representations to the Main Modifications consultation including raising objections to suggested modifications. However, as identified in Paragraph 1.26, the amendments are considered necessary by the Inspector in order for him to find the document 'sound' and objecting to them could threaten the

adoption of the DPD. Furthermore, raising new arguments or proposals increases the risk that the Inspector may wish for a further period of consultation or take longer to produce his final report, thus delaying the timing of the adoption of the DPD.

- 2.3 Alternative Option 3 (relating to Recommendation 3): Cabinet could choose to require the draft SPD to come before them for consideration prior to the commencement of a public consultation on the guidance. However, this would add delay to its adoption and Cabinet will in any event be taking the decision whether the Council should adopt the supporting guidance.

### **3 Legal Implications**

- 3.1 There are no particular legal implications relating to the recommendations in this report.
- 3.2 The DPD has been produced following planning legislation and in order to adopt the policy document it will need to go through formal Council procedures, in accordance with The Constitution.

### **4 Financial Services**

- 4.1 Previous reports that have come to Cabinet have sought to set aside money to cover costs associated with the production of the DPD.
- 4.2 At its meeting in August 2022, Cabinet agreed to set aside £95,000 from the Planning Appeals Reserve to cover the costs of consultancy work and the Examination (including the Programme Officer and Inspector's costs). This was based on an estimated cost of work required before submission of the DPD and during the Examination process but there were a number of variables that may influence overall costs.
- 4.3 It is now apparent that costs associated with the Examination and the additional SPD guidance required to support the implementation of the DPD are likely to be higher than initial estimated and thus recommendation 4 of this report seeks approval for a further £35,000 to be set aside from the Planning Appeals Reserve to cover the costs associated with this project.
- 4.4 Past reports have also highlighted that additional technical expertise may be required to aid the implementation of the DPD and assess the plethora of technical information that will be submitted as part of planning applications as a result of the DPD policies. As highlighted in Paragraph 1.32, officers propose to create a new permanent post for somebody to provide the technical expertise required. This is being factored into the Medium-Term Financial Strategy (MTFS) and will soon go through the HAY Panel process.

### **5 Business Strategy**

- 5.1 Health, Homes, Communities – The adoption of the DPD will result in a demonstrable improvement in the energy efficiency and quality of homes and other buildings in the district. Homes built to these standards should also reduce fuel costs for occupants thus bringing benefits to livelihoods. The policies will minimise any adverse impact that communities in Warwick District are having upon the local and global climate.
- 5.2 Green, Clean, Safe – As above, the DPD policies will result in a reduction in

emissions thus having a positive environmental impact.

- 5.3 Infrastructure, Enterprise, Employment – The DPD will provide a stimulus to the local 'green' economy and will result in more energy efficient commercial buildings, ultimately reducing costs to businesses.
- 5.4 Effective Staff – The production of the DPD has aided the knowledge of council staff on this important subject matter.
- 5.5 Maintain or Improve Services – This policy document will have a significant beneficial impact upon residents within the district and is critical to the success of the Council's Climate Emergency Action Plan.
- 5.6 Firm Financial Footing over the Longer Term – The policies will improve the energy efficiency of buildings and thus result in reduced bills to residents, businesses, and the Council.

## **6 Environmental/Climate Change Implications**

- 6.1 The NZC DPD is a response to the climate emergency. A key outcome of the Fit for the Future Green, Clean, Safe strand is achieving the Council's stated outcome of total carbon emissions within Warwick District being as close to zero as possible by 2030. The DPD will be critical to achieving this stated outcome. The Council's Climate Change Action Programme (November 2021), committed to progressing the DPD. Planning policy has a critical role in delivering the Council's aims on climate change.

## **7 Analysis of the effects on Equality**

- 7.1 Consultations have been conducted in line with the Council's adopted Statement of Community Involvement.
- 7.2 The DPD policies will improve the fabric of new buildings and thus their energy efficiency, ultimately reducing bills associated with energy usage. This will be of benefit to all residents within the district that ultimately live in a property that is approved subject to the policies in the DPD.
- 7.3 There are no further equality impacts associated with the proposals in this report.

## **8 Data Protection**

- 8.1 There are no Data Protection implications associated with the recommendations in this report.

## **9 Health and Wellbeing**

- 9.1 The proposed DPD policies, if adopted, will improve energy efficiency of homes and businesses and it is expected that they will help to minimise energy usage. This will be of significant benefit to residents and businesses as it will reduce costs and reduce the number of people suffering from fuel poverty. This has the potential to have a significant positive impact upon health and wellbeing of residents. The DPD policies also ultimately mean Warwick District Council is making great strides in reducing its impact upon global climate change.



## **10 Risk Assessment**

- 10.1 Failure to develop and implement policies requiring new developments to be net zero carbon in operation (for the purposes of this DPD this relates to regulated operational energy resulting from fixed building services and fittings) will undermine the council's climate emergency declaration and furthermore will mean the council's stated ambitions on climate change would be undeliverable, in the absence of national policy being implemented.
- 10.2 Alternative options (see Section 2) identify risks associated with taking alternative approaches to the recommendations as set out in this report.

## **11 Consultation**

- 11.1 The DPD has been subject to two public consultations and also an Examination in Public.
- 11.2 There has been regular engagement with the relevant Portfolio Holder during the preparation of the DPD and following submission of the document for Examination. A cross-party Working Group for the DPD also met on a number of occasions at earlier stages of the production of the DPD.

### **Appendices to this report:**

- Appendix 1 – Schedule of Main Modifications
- Appendix 2 – Schedule of Additional Modifications (minor changes)
- Net Zero Carbon DPD – Track Change version identifying Main and Additional modifications.

### **Supporting documents:**

Report to Cabinet and Appendices, 10<sup>th</sup> August 2022

Report to Cabinet and Appendices, 10<sup>th</sup> February 2022

Report to Cabinet and Appendices, 8<sup>th</sup> July 2021

Local Development Scheme, December 2022

Link to Main Modifications Consultation page:

[https://www.warwickdc.gov.uk/info/20799/development\\_plan\\_documents/1713/net\\_zero\\_carbon\\_development\\_plan\\_document/2](https://www.warwickdc.gov.uk/info/20799/development_plan_documents/1713/net_zero_carbon_development_plan_document/2)