

North Tyneside Council Report to Cabinet Date: 11 November 2013

ITEM 7(b)
Title: North Tyneside Local
Plan: The Duty to Co-operate
and the Memorandum of
Understanding

Portfolio(s): **Housing and Environment**

Cabinet Member(s): **Councillor John
Harrison**

Report from Directorate: **Business and Economic Development**

Report Author: **Phil Scott – Head of Environment and
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Wards affected: **All**

PART 1

1.1 Purpose:

The purpose of the report is to apprise Cabinet of:

- The new statutory requirement that all local planning bodies have in relation to the Duty to Co-operate when preparing their Local Plans;
- The nature of the co-operation and joint working that has been undertaken to date in North Tyneside and the wider sub-region; and
- The draft Memorandum of Understanding that has been prepared by the seven North East authorities, which sets out the formal mechanisms in order to comply with the new duty.

1.2 Recommendation:

It is recommended that Cabinet approve the Memorandum of Understanding as the appropriate mechanism for considering cross boundary issues in order to comply with the Duty to Co-operate.

1.3 Forward plan:

28 days notice of this report has been given as it first appeared on the forward plan that was published on 9 October 2013.

1.4 Council plan and policy framework

1.4.1 Our North Tyneside Plan 2014-2018

Compliance with the Duty to Co-operate and adoption of the Memorandum of Understanding is implicitly linked to the emerging North Tyneside Local Plan.

Accordingly, accepting these proposals would lend support to the following Our North Tyneside Plan priorities:

Our People will:

- Be listened to by services that respond better and faster to their needs;
- Be supported to achieve their full potential, especially our children and young people;
- Be supported to live healthier and longer lives; and
- Be cared for and kept safe if they become vulnerable.

Our Places will:

- Be places that people like living in and will attract others to either visit or live;
- Have more quality affordable homes; and
- Work with residents, communities and businesses to regenerate the borough.

Our Economy will:

- Grow by building on our strengths, including existing world class companies in marine technology and engineering;
- Have the right conditions to support investment and create new jobs, especially apprenticeships; and
- Have local people that have the skills which businesses need.

Policy Framework:

The draft Memorandum of Understanding does not itself form part of the Development Plan or any other document forming part of the Authority's formal Policy Framework, and therefore can be adopted by resolution of Cabinet.

1.5 Information:

1.5.1 Background to the Duty to Co-operate

All authorities are required to prepare and maintain a Local Plan setting out long term proposals for the development and use of land.

From 2004, Regional Spatial Strategies (RSS) formed part of the development plan for each district. In part, these identified sub-regional infrastructure requirements and priorities and set the growth requirements for each district. These were subsequently reflected within individual district local plans.

Under the Coalition Government's planning reforms, this regional tier of plans has been abolished. In April 2013, the North East's RSS was formally revoked. Each authority is now responsible for determining its own growth requirements.

To maintain some form of regional coordination, the Localism Act introduced the "Duty to Co-operate" to all local planning authorities and public bodies. Specifically, the Duty:

- Relates to sustainable development or use of land that should have a significant impact on at least two local planning areas;
- Requires that councils set out planning policies to address such issues;
- Requires that councils and public bodies engage constructively, actively and on an ongoing basis to develop strategic policies; and

- Requires councils to consider joint approaches to plan making.

The National Planning Policy Framework (NPPF) (March 2012) provides further clarification on the Duty. Co-operation is required on all planning issues (such as housing, transport infrastructure and Green Belt) where those issues are considered both to be **strategic** and to have a **significant impact** such as assessing the quality and capacity of a range of infrastructure types. This would ensure that infrastructure required to support growth such as roads, energy and education are planned for and delivered in a co-ordinated manner.

The Duty covers other public bodies who must co-operate with a local authority on issues of common concern in order to prepared a sound local plan. These include:

- Environment Agency
- Natural England
- English Heritage
- The Homes and Communities Agency
- Highways Agency
- Marine Maritime Organisations

Local Enterprise Partnerships (LEPs) are not covered under the Duty. However, they are identified as one of the bodies that those covered by the duty “*should have regard to*” when preparing plans and other related activities. This is relevant for this Region given:

- The recent North East Independent Economic Review;
- The North East LEP is preparing a Strategic Economic Plan; and
- The establishment of the North East Leadership Board.

Private sector utility providers are also not covered by the Duty. But, it is in their interests and those of the authority to be involved in the plan making process and to actively contribute to key decisions (so that essential infrastructure is delivered in tandem with new development).

1.5.2 The Duty to Co-operate and the Local Plan Examination

A key stage in the local plan making process is the examination of any local plan by an independent Inspector. Compliance with the Duty is firmly enshrined within the examination stage and is the first issue raised by the Inspector. It is further embedded within the broader “tests of soundness” as to be found sound, the Inspector must be satisfied that the local plan is:

- Positively prepared – based on a strategy to meet objectively assessed development and infrastructure requirements, *including unmet requirements from neighbouring authorities*, where its reasonable to do so and consistent with the principles of sustainable development;
- Justified - where it is the most appropriate strategy when considered against the reasonable alternatives, based on proportionate evidence; and
- Effective – where the plan is deliverable and based *on effective joint working on cross boundary strategic priorities*.

Other parts of the “tests of soundness” can be repairable where there is some degree of non-compliance (*eg* an examination can be adjourned for 6 months to allow a council to address particular issues – thereby still enabling the plan to proceed to adoption).

By contrast, the Duty is deemed a “showstopper”. Failure to demonstrate compliance with the Duty gives the Inspector no alternative but to immediately declare the plan unsound. Several plans have failed for this reason. Inspectors require evidence demonstrating how the above tests have been complied, such as:

- Within reason, all bodies have been given adequate opportunity to influence the plan;
- There have been serious discussions on the plan and any outside implications;
- Whether there are any sub-regional assessments that have been completed in consultation with others;
- Whether there are assessments of need from adjoining councils;
- How would the plans policies, proposals and infrastructure requirements affect others (and vice versa)?; and
- Can identified external needs be accommodated within that council and if not how would they be met?

An example of demonstrating compliance with the Duty could be that in order to meet its housing requirements, Council A has no option but to consider releasing Green Belt sites. A “*reasonable alternative*” would be to consider whether neighbouring Council B could offer more suitable (and less sensitive) sites to help meet the housing demand. Both authorities would need to provide the examination with an audit trail of those discussions and consideration of any arising implications that effective co-operation and agreement has taken place. Examples of the nature of the evidence that an Inspector would wish to see can include:

- Representations from adjoining authorities
- Supporting evidence papers
- Memorandums of Understanding / Agreements (outlined below)
- Statements of common ground
- The joint commissioning of shared evidence
- The preparation of joint plans or even complementary policies.

Cross boundary, co-operation of this nature is required at the earliest opportunity in the plan making process and is then seen as an iterative process. It should be stressed that there is “no duty to agree”. The Duty simply requires that any matters that have potential cross boundary implications are discussed and appropriately evidenced. Using the above example, should Council B not agree to absorbing the additional housing requirements, Council A could then evidence this decision which may support a case to release Green Belt sites.

It still remains open for an individual council to object to the emerging local plan of another council and these objections would be considered at the examination.

1.5.3 Cross Boundary Working in North Tyneside

To date, there has been a strong record of accomplishment of co-operation between the seven North East councils on both strategic policy issues and establishing consistent methodologies to develop evidence to inform their respective Local Plans.

The Heads of Planning from the 7 authorities (of Newcastle, Gateshead, Durham, Northumberland, North Tyneside, South Tyneside and Sunderland) meet regularly to help progress the issues likely to be considered under the Duty.

Cross boundary meetings in respect to common local plan issues have long been held at officer level on an informal basis with adjoining authorities. Now the Duty is in place, a

Local Plan Officer Working Group for the North of Tyne authorities (*ie* North Tyneside, Newcastle and Northumberland) have met on a regularly and formalised basis since August 2012. Similar arrangements are in place for those authorities South of the Tyne.

The level of joint working has varied depending on the nature of the issue, in some cases this has involved all North East authorities, or just the Tyne and Wear authorities or just on a one to one basis. Examples of specific areas of joint working involving this Authority include:

- Preparing position statements (of current evidence and strategic issues) for the respective regional Chief Executives Group and Leaders and Elected Mayors Groups;
- Jointly commissioning evidence *eg* future waste requirements and strategic flood risk assessments;
- Identifying immediate cross boundary issues and agreeing standard approaches to delivering common pieces of work *eg* Strategic Housing Land Availability Assessments;
- Developing evidence on cross boundary infrastructure requirements, capacities priorities required to deliver the growth requirements for each authority; and
- This Authority's Local Plan Sub-Group (appointed by the Overview and Scrutiny Committee) meeting directly with Councillors and officer representatives from Northumberland County Council to share information and discuss future opportunities for the respective Local Plans.

1.5.4 Proposal to Comply with the Duty to Co-operate – The Memorandum of Understanding

Through the Planning Heads of Service Group, a Memorandum of Understanding (MOU) and governance structure has been developed. The MOU has been drawn up with legal support from the 7 authorities and can appear quite legalistic in nature. However, the MOU is essentially operational in nature and is not legally binding.

The MOU has been prepared to:

- **Set out** how each authority will comply with the duty;
- Clarify and record responsibilities of the authorities, both individually and collectively; and
- Provide clear guidelines for joint working in accordance with the governance arrangements set out in the MOU.

The MOU and governance structure is set out at Appendix 1 and builds on existing co-operation and structures. It is intended that the Planning Heads of Service Group would be the mechanism to co-operate on strategic priority issues and would be the conduit for reporting their discussions and agreed actions to each Authority and as appropriate to the following Groups already in existence:

- The Economic Directors Group
- The LEP Transport Group
- The LEP Planning and Infrastructure Group
- The NE LEP
- The Chief Executives Group
- Leaders and Elected Mayors Group.

In the event that issues between authorities cannot be resolved by the Planning Heads of Service Group, the MOU sets in place a mechanism by which the matters would be

referred to the Chief Executives Group and further referred to the Leaders and Elected Mayors Groups if the matter cannot be satisfactorily resolved.

Drafts of the MOU along with position statements outlining current evidence and strategic issues have been previously presented to both the Chief Executives Group and the Leaders and Elected Mayors Group and have been agreed at those respective levels. It has been agreed that the 7 Authorities will now individually sign off the MOU through their respective Cabinet / Executive committees.

1.6 Decision options:

The following decision options are available for consideration by Cabinet:

Option 1

Approve the recommendations contained in paragraph 1.2 of this Report.

Option 2

Approve the attached Memorandum of Understanding but with modifications to the document.

Option 3

Decline to approve the recommendations contained in paragraph 1.2 of this Report, and refer the content of the report to officers for further consideration.

1.7 Reasons for recommended option:

Option 1 is recommended for the following reasons:

Developing a Memorandum of Understanding is advocated by the Planning Inspectorate as being an important tool in order to demonstrate compliance with the Duty to Co-operate at the Local Plan Examination.

1.8 Appendices:

Appendix 1: Memorandum of Understanding

1.9 Contact officers:

Jackie Palmer, Planning Manager, tel no: (0191 643 6336)
Neil Cole, Planning Policy Manager, tel no: (0191 643 6326)
Phil Scott, Head of Environment and Leisure, tel no: (0191 643 7299)
Alison Campbell, Finance Business manager, tel no: (0191 643 7038)

1.10 Background information:

The following background papers and research reports have been used in the compilation of this report and are available for inspection at the offices of the author.

- 1 The Localism Act 2011
- 2 National Planning Policy Framework 2012

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

There are no direct costs associated with adopting the Memorandum of Understanding as the appropriate mechanism for considering cross boundary issues in order to comply with the Duty to Co-operate. .

2.2 Legal

Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act (2012)) introduces a Duty to Co-operate to all local planning authorities and a number other specific public bodies in preparing local plans. Section 20 of the 2004 Act requires that at the examination stage, the local planning authority must demonstrate how it has complied with the duty to co-operate in preparing the Local Plan.

Adopting a Memorandum of Understanding is not a statutory requirement, though is considered good practice to demonstrate compliance with the Duty.

Under the provisions of the 2004 Act, there is no legal duty to agree on issues and the Memorandum of Understanding would not legally tie any of the signatory councils.

2.3 Consultation/community engagement

2.3.1 External Consultation/Engagement

The Memorandum of Understanding is an operational protocol setting out governance guidelines for joint working on strategic cross boundary issues to support the content of the respective Local Plans, including this Borough's.

It has been drawn up through the Planning Heads of Service Group of the 7 North East authorities and presented to an endorsed by:

- The Regional Chief Executives Group (5 October 2012, 5 December 2012 and 6 June 2013); and
- The Leaders and Elected Mayors Group (18 June 2013)

All matters contained within the emerging North Tyneside Local Plan must by law be consulted upon in accordance with the Statement of Community Involvement (September 2013).

2.4 Human rights

There are no Human Rights implications directly arising from this report.

2.5 Equalities and diversity

There are no Equalities and Diversity implications directly arising from this report.

2.6 Risk management

There are no Risk Management implications directly arising from this report.

2.7 Crime and disorder

There are no Crime and Disorder implications directly arising from this report.

2.8 Environment and sustainability

The Memorandum of Understanding has no direct implications, but all matters contained within the emerging North Tyneside Local Plan must by law promote sustainable development and be subject of a separate Sustainability Appraisal / Strategic Environmental Assessment and Habitat Regulations Assessment.

PART 3 - SIGN OFF

- Chief Executive
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Strategic Manager Policy, Partnerships, Performance And Communications

MEMORANDUM OF UNDERSTANDING

Duty to Co-operate -Newcastle, Gateshead, Northumberland, Durham, North Tyneside, South Tyneside and Sunderland Councils

1. Introduction

- 1.1 This Memorandum of Understanding is the agreement between Newcastle City Council, Gateshead Council, Northumberland County Council, Northumberland National Park, Durham County Council, North Tyneside Council, South Tyneside Council and Sunderland City Council (“the Partners”) to comply with the duty to co-operate on planning issues set out in s.33A of the Planning and Compulsory Purchase Act 2004 (the Act) as well as those that relate to Strategic Priorities as set out in the National Planning Policy Framework.
- 1.2 Section 33A of the Act introduces a new “duty to co-operate”. This applies to all local planning authorities in England and to a number of other public bodies including the Marine Management Organisation, Environment Agency, Historic Buildings & Monuments Commission for England, Natural England, Civil Aviation Authority, Homes & Communities Agency, Primary Care Trusts, Office of the Rail Regulator, Highways Agency, Integrated Transport Authorities and Highway Authorities.
- 1.3 Section 20 of the Act requires that in examining Local Plans the Secretary of State will be assessing whether the local planning authority has complied with the duty to co-operate in preparing the Local Plan.

2 The purpose of our co-operation

- 2.1 The purpose of the Memorandum of Understanding is to set out how the Partners will comply with the duty to co-operate for their mutual benefit and for that of their joint plan making area. It will:
- Clarify and record the responsibilities of the Partners both individually and collectively.
 - Establish guidelines for joint working going forward in accordance with the governance arrangements set out in the Memorandum of Understanding.

3. Status of the Memorandum of Understanding

- 3.1 The Memorandum of Understanding is an operational document. It is not a formally binding legal agreement and the partnership is not a legal entity.
- 3.2 The Partners individually and collectively agree to use all reasonable endeavours to comply with the terms and spirit of the Memorandum of Understanding.
- 3.3 Under the Memorandum of Understanding the Partners cannot employ staff, let contracts or commit financial resources on behalf of the constituent Partners without their formal agreement.
- 3.4 Agreement to or withdrawal from The Memorandum of Understanding does not remove a local authority’s duty to co-operate pursuant to the Act

4. Governance Arrangements

- 4.1. These arrangements are set out on the attached flowcharts (“the Flowcharts”). The arrangements are as follows:
- 4.2. Each local authority will be responsible for preparing and adopting their own Local Plan, development plan documents and local development documents and setting up their own governance arrangements to facilitate this.
- 4.3. Each local authority’s Local Plan Governance Group will feed progress reports and strategic priority issues that have a cross boundary interest to the Planning Heads of Service Group for discussion. The Planning Heads of Services Group will include representation from each of the 7 local authorities. This will be the mechanism of co-operating on such issues.
- 4.4. The Planning Heads of Service Group will report their discussions and agreed actions back to the Local Plan Governance Groups and as appropriate to any or all of the following:
 - Economic Directors Group
 - LEP Transport Group
 - LEP Planning and Infrastructure Group
 - Chief Exec Group
 - Leaders and Elected Mayors Group
 - North East LEP
- 4.5. These above groups may also refer issues to the Planning Heads of Service Group for discussion and or action and for feeding back to the Local Plan Governance Groups².
- 4.6. The Local Plan Governance group is the relevant board or grouping of senior officers managing the production of the authority’s local plan

5. Scope of Co operation

- 5.1. Each Partner will engage constructively, actively, expediently, and on an on-going basis in any process which involves the following:
 - The preparation of Local Plans;
 - The preparation of other local development documents;
 - Activities that can reasonably be considered to prepare the way for activities which any of the above that are or could be contemplated; and
 - Activities that support any of the above so far as they relate to sustainable development or use of land that has or would have a significant impact on at least two planning areas including sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas.
- 5.2. Engagement for the purposes of 5.1 includes in particular:
 - Considering whether to consult on and prepare and enter into and publish agreement on joint approaches to the undertaking of activities in 5.1; and
 - Considering whether to agree to prepare joint local development documents.

5.3 When complying with the duty to co-operate the Partners will have regard to guidance given by the Secretary of State.

6. Meetings

6.1. The Planning Heads of Service Group will meet bi-monthly or as required.

7. Funding and Finance

7.1. Each authority will use its own staff to progress their Local Plans except where consultants are used.

7.2. If consultants are used on a joint basis their costs will be apportioned dependent upon the amount of work that affects each authority's area. The Project Directors responsible for each Local Plan Governance Group or in their absence the Project Owners as specified on the Flowcharts will be responsible for authorising the costs associated with any work prior to that work being commenced.

7.3. Each authority will invoice the other authority once every two months for expenditure it has incurred on the others behalf, providing supporting detail of the relevant transactions as appropriate.

8. Duration

8.1. The joint governance arrangements will remain in place until the duty to co-operate is no longer required by legislation

9. Dispute Resolution

9.1. In the event of a dispute that cannot be resolved by the Planning Heads of Service Group the matter concerned will be referred to the Chief Exec Group. If the matter cannot be resolved by the Chief Exec Group it will be referred to the Leaders and Elected Mayors Group. If the matter is not able to be satisfactorily resolved the Partners put in writing and keep on file the matter.

9.2. Those decisions in respect of agreement and dispute will be clearly logged and submitted as part of the evidence to each respective LPAs local plan examination to demonstrate how the duty has been complied with

10. Intellectual Property Rights

10.1. Subject to the rights of third parties, the Partners will share equally the intellectual property rights to all data, reports, drawings, specifications, designs, inventions or other material produced or acquired including copyrights in the course of their joint work. The Partners agree that any proposal by one Partner to permit a third party to utilise the documents and materials produced by the partnership shall be subject to the agreement of all other Partners. Any changes, amendments or updates made to the documents and materials, if made under the terms of the Memorandum of Understanding, shall be jointly owned by the Partners.

11. Freedom of Information Requests

11.1. If any partner receives a freedom of information request in respect of shared work associated with the MOU it will be shared at the earliest opportunity with the other

relevant authorities in order to determine and achieve a consensus as to what information shall be released.

12. Termination

- 12.1. Any of the Partners may withdraw from the Memorandum of Understanding at any time. Any such withdrawal would need to be approved by the Chef Exec Groups and Leaders and Elected Mayors Group.
- 12.2. If the Memorandum of Understanding is terminated, the Partners agree that any reports, studies or any other information which has been jointly prepared by the Partners can be used by each of the Partners separately.

13. Signatories

