

North York Moors National Park Authority Planning Committee

21 March 2013

Joint Minerals and Waste Plan

1. Purpose of the Report

- 1.1 To update Members on progress with establishing the framework for producing a Joint Minerals and Waste Plan.
- 1.2 To seek Members' comments and agreement on the draft Memorandum of Understanding and Project Plan.
- 1.3 To present Members with an outline of the proposals for the initial consultation.

2. Background

- 2.1 At their Planning Committee meeting on 13 December 2012 Members resolved to agree to the production of a Joint Minerals and Waste Plan with North Yorkshire County Council and the City of York Council. Members will recall that the need to review the minerals policies has arisen from gaps in policy which are the result of the introduction of the National Planning Policy Framework and the resultant loss of national Minerals Policy Statements along with the recent revocation of the Regional Spatial Strategy. Whilst the need for new waste policies is not as pressing, the production of the joint Plan will enable the approach for the Park to be clearly aligned with the approach of other waste planning authorities in the region, acknowledging the demise of a broader regional strategy in this respect.

3. Update on Establishing Joint Working Arrangements

- 3.1 Member approval for producing the joint Plan was obtained from North Yorkshire County Council in February. It is anticipated that formal approval will be obtained from the City of York Council at the start of April and the indication is that Members will be supportive of the approach.
- 3.2 In the meantime, it has been necessary to begin to consider the arrangements for joint working in order that the plan production process can begin swiftly upon Member agreement. Amongst other more technical elements, this has involved the production of a Memorandum of Understanding and a draft project plan.
- 3.3 The draft Memorandum of Understanding is attached at **Appendix 1**. This is not intended to be a legal agreement but will provide a useful basis for operating the partnership throughout the production of the Plan, and the draft has been reviewed by the Authority's solicitor in this respect. The Memorandum of Understanding is also being presented to Members of North Yorkshire County Council and the City of York Council.
- 3.4 A key element of the Memorandum of Understanding is a ratio for cost apportioning. This is not intended to be prescriptive in relation to every area of work but will provide a useful basis for cost sharing in relation to some of the more 'fixed' costs such as printing and consultation costs.

Other costs which may be subject to more influence from the issues arising during plan production, such as the need for additional evidence or the cost of the Examination, will be apportioned depending upon the circumstances. It is considered that a 20% share for the National Park Authority is an appropriate balance between considerations of population versus geographical size, alongside acknowledgement that the production of a joint Plan will provide cost savings overall and enable the Authority to tap into the minerals and waste expertise present within North Yorkshire County Council. In terms of sharing of staff time, a meeting between officers was held in December where tasks relating to the initial consultation were divided amongst the three Authorities.

- 3.5 A draft Project Plan has been drawn up by all three Authorities and is attached at **Appendix 2**. This envisages that the Plan could be adopted by the end of 2015. The Project Plan assumes that a joint Member Committee will be established. The Project Plan will need to be reviewed as Plan production progresses to address any unforeseen delays. Members should note that any purdah restrictions arising from the upcoming County Council elections may result in the initial consultation needing to be delayed until later in May.
- 3.6 Officers have been investigating the potential for establishing a joint Committee as a more efficient way of securing the involvement of Members throughout the process. Legislation does not provide a clear steer as to whether a National Park Authority may be involved in such a Committee and clarification is currently being sought from the Department of Communities and Local Government. Members will be updated at the Planning Committee meeting.
4. **Regulation 18 Consultation**
- 4.1 The Town and Country Planning (Local Planning) (England) Regulations 2012 set out the requirements in relation to plan preparation. Regulation 18 requires the local planning authority to notify relevant organisations or individuals about the intention to prepare a plan and to invite comments on what the plan should contain.
- 4.2 It is proposed to produce a short leaflet which can be sent (via post or email) to everyone on each of the Authorities' databases. This will explain the purpose of the Plan and ask consultees for their thoughts on what should be included. The consultation will be publicised to the wider public through the use of measures such as press releases, posters and social media.
- 4.3 Section 33 of the Localism Act sets out requirements in relation to the Duty to Co-operate. Under the Duty to Co-operate planning authorities must demonstrate that they have engaged constructively, actively and on an on-going basis with other planning authorities and other prescribed organisations. Discussions of this nature will take place alongside the Regulation 18 consultation, building on discussions North Yorkshire County Council had already been holding prior to beginning work on the joint Plan. In particular it will be important for us to engage in discussions with Redcar and Cleveland Borough Council as adjoining minerals and waste planning authority and as waste management authority for part of the Park within the Borough.
- 4.4 In tandem with the Regulation 18 consultation, consultation will also take place on the Scoping Report for the Sustainability Appraisal. Sustainability Appraisal, required by legislation, is an integral part of Plan production and work is currently underway to produce a Scoping Report for the Plan area.

- 4.5 Paragraph 8.3 of the North York Moors Statement of Community Involvement states that advertisements will be placed in local newspapers at key stages in the preparation of Local Development Framework documents. This was based upon the regulations in force at the time of its production which required advertisements to be placed in newspapers. This costly exercise, which it is thought did not generate a huge amount of additional interest, is no longer a legal requirement.
- 4.6 In order to provide the Authority with a degree of flexibility as to when to place advertisements in local newspapers, an amendment to the Statement of Community Involvement is required. Within paragraph 8.3 it is proposed to remove the words 'and key stages in the Local Development Framework' and to insert 'as appropriate' at the end of the first sentence. As there are no longer any regulations governing the production or amendment of a Statement of Community Involvement the Authority is entitled to make such an amendment. Other forms of communication and consultation, such as direct contact, press releases, social media and the Moors Messenger, are considered to be suitable methods of ensuring that the public are aware of and can be engaged in the plan preparation process. It is acknowledged that creating addendums to documents is not ideal and it is proposed that the entire Statement of Community Involvement be revised shortly when resources allow.

5. **Evidence Base**

- 5.1 Other work that is on-going relates to the evidence base. Options for defining Minerals Safeguarding Areas (as required by the National Planning Policy Framework) and for producing evidence relating to waste are currently being explored with the other participating Authorities. The Authority will also be providing a modest contribution towards a regional study exploring the potential to make use of marine aggregates.

6. **Next Steps**

- 6.1 Upon agreement to production of the joint Plan by North Yorkshire County Council and the City of York Council, the consultation as described in section 4 of this report will take place.
- 6.2 The consultation comments received will be taken into account in developing the Issues and Options, which in itself will be subject to consultation in Autumn 2013.
- 6.3 Legislation permitting, (see paragraph 3.6 above) procedures for setting up a joint Committee will also be put into place and it is probable that National Park Authority Members can be selected at their AGM in June.

7. **Financial and Staffing Implications**

- 7.1 The costs related to the Regulation 18 consultation can be met through the Policy budget for 2012/13 and 2013/14. Appropriate provision for further stages of the work and for the evidence base will be made in the budget for 2013/14.
- 7.2 In terms of staffing implications, the requirements relating to producing a joint Plan can be met via the existing staff resource in the Policy team.

8. **Sustainability Appraisal**

8.1 This Minerals and Waste Plan will be subject to Sustainability Appraisal and the sustainability implications will be addressed through production of the Plan.

9. **Legal Implications**

9.1 Regulation 18 consultation will be undertaken in accordance with the requirements of the Town and Country Planning (Local Planning) (England) Regulations 2012.

10. **Recommendation**

10.1 That Members note the content of the report.

10.2 That Members agree to the Memorandum of Understanding and authorise officers to make minor amendments to this.

10.3 That Members agree to the Project Plan.

10.4 That Members note the proposals for Regulation 18 consultation and provide any comments on the proposed process.

10.5 That Members agree to the amendment to the Statement of Community Involvement set out in paragraph 4.5.

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Background documents to this report

File Ref.

1. Joint Minerals and Waste Plan file

3050/19

Full name: Memorandum of understanding for joint working by public bodies.

DATED

MEMORANDUM OF UNDERSTANDING

between

THE NORTH YORKSHIRE COUNTY COUNCIL

and

THE CITY OF YORK COUNCIL

AND

THE NORTH YORK MOORS NATIONAL PARK AUTHORITY

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THIS AGREEMENT is dated [DATE]

PARTIES

The parties to this memorandum of understanding (“**MoU**”) are:

THE NORTH YORKSHIRE COUNTY COUNCIL of County Hall, Racecourse Lane, Northallerton, North Yorkshire (“**the County Council**”);

THE CITY OF YORK COUNCIL of [] (“**the City Council**”) and

THE NORTH YORK MOORS NATIONAL PARK AUTHORITY of The Old Vicarage, Helmsley, North Yorkshire (“**the National Park Authority**”)

BACKGROUND

The County Council, the City Council and the National Park Authority have agreed to work together on the project detailed in 0 to this MoU (“**the Project**”).

The parties wish to record the basis on which they will collaborate with each other on the Project. This MoU sets out:

- the key objectives of the Project;
- the principles of collaboration;
- the governance structures the parties will put in place; and
- the respective roles and responsibilities the parties will have during the Project.

KEY OBJECTIVES FOR THE PROJECT

The parties shall undertake the Project to achieve the key objectives set out in 0 to this MoU (“**Key Objectives**”).

The current position with regard to the Project and the contributions already made (financial and otherwise) are as detailed in 0 to this MoU.

PRINCIPLES OF COLLABORATION

The parties agree to adopt the following principles when carrying out the Project (“**Principles**”):

- collaborate and co-operate to ensure that activities are delivered and actions taken as required;
- be accountable to each other for performance of the respective roles and responsibilities set out in this MoU;
- communicate openly about major concerns, issues or opportunities relating to the Project;
- adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation.

act in a timely manner and respond accordingly to requests for support;
deploy appropriate resources to fulfil the responsibilities set out in this MoU. [In particular the parties agree to make the contributions detailed in 0B to this MoU]; and
act in good faith to support achievement of the Key Objectives and compliance with these Principles.

PROJECT GOVERNANCE

Overview

The governance structure defined below provides a structure for the development and delivery of the Project. It is recognised that the governance structure may change over time, particularly if a Joint Committee is established by the parties to carry out their respective Executive functions in connection with the Project.

Guiding principles

The following guiding principles are agreed. The Project's governance will aim to:

- provide strategic oversight and direction;
- be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;
- allocate decision-making responsibility to the appropriate level;
- provide coherent, timely and efficient decision-making; and
- correspond with the key features of the Project governance arrangements set out in this MoU.

Members' Board

The **Members' Board** provides overall strategic oversight and direction to the Project. This group will initially consist of the Executive Committees (or equivalents) in each of the three parties to this MoU.

Consideration is to be given to the establishment of a Joint Committee of the parties, to which each party's relevant Executive functions will be delegated. If and when that happens, the Joint Committee will become the Members' Board for the purposes of this MoU.

Project Group

The Project Group will provide strategic management at Project and workstream level. It will provide assurance to the Members' Board that the Key Objectives are being met and that the Project is performing within the boundaries set by the Members' Board.

The Project Board consists of representatives from each of the parties. The Project Board shall have responsibility for the creation and execution of the Project and will draw

on appropriate resources. The core Project Group members are:

Rob Smith - NYCC

Rebecca Harrison - CYC

Andrea McMillan – NYMNPA

Or any subsequent replacement staff nominated by the relevant authority

The Project Group shall meet as and when its members deem appropriate.

- (c) The Project Group shall not incur any joint costs of the Project without unanimous agreement of the Project Group or (failing that) the Members' Board.

Reporting

Project reporting shall be undertaken at three levels:

Project Group: Minutes and actions will be recorded for each Project Group meeting. Any additional reporting requirement shall be at the discretion of the Project Group.

Members' Board: Reporting shall be at key project stages as determined by the Project Group and agreed project plan

Organisational: the Project Group members shall be responsible for drafting reports into their respective sponsoring organisation as required for review by the Project Group before being issued.

ROLES AND RESPONSIBILITIES

The parties shall undertake the roles and responsibilities to deliver the Project as may be allocated by the Members' Board or agreed by the Project Group.

DISPUTES, INQUIRIES AND CLAIMS

If any party has any issues, concerns or complaints about the Project, or any matter in this MoU, that party shall notify the other parties and they shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the Members' Board for resolution.

If any party receives any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier or requests for information) in relation to the Project, the matter shall be promptly referred to the Project Group (or its nominated representatives). No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Project, without the prior approval of the Project Group (or its nominated representatives) save that this paragraph shall not fetter the ability of any party to comply with its statutory obligations.

INTELLECTUAL PROPERTY

The parties intend that [notwithstanding any secondment] any intellectual property rights created in the course of the Project shall vest in the commissioning party or the party or parties whose employee/s created them

Where any intellectual property right vests in any party in accordance with the intention set out above, that party shall grant an irrevocable licence to the other parties to use that intellectual property for the purposes of the Project or otherwise.

TERM AND TERMINATION

This MoU shall commence on the date of signature by all the parties, and shall expire on the day when the Project documents (being the joint minerals and waste local plan) have been adopted by all parties and the time for any legal challenges have expired (or, if any legal challenges are made, the day upon which they are finally determined)

Any party may terminate this MoU by giving at least three months' notice in writing to the other parties at any time.

Any documents created in the course of the Project may be used by any of the parties for any purpose following termination of this MoU.

VARIATION

This MoU, including the Annexes, may only be varied by written agreement of the Members' Board. It is anticipated that supplemental memoranda will be created in the course of the Project to deal with specific aspects of it.

CHARGES AND LIABILITIES

Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU.

The parties agree to share the costs and expenses arising in respect of the Project between them to the extent recorded in 0B to this MoU.

All parties shall remain liable for any losses or liabilities incurred due to their own or their employees' actions and no party intends that any other party shall be liable for any loss it suffers as a result of this MoU.

STATUS

This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU. The parties enter into the MoU intending to honour all their obligations.

Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, nor authorise either of the parties to make or enter into any commitments for or on behalf of the other party.

Signed for and on behalf of THE NORTH YORKSHIRE COUNTY COUNCIL

Signature:
Name:
Position:
Date:

Signed for and on behalf of THE CITY OF YORK COUNCIL

Signature:
Name:
Position:
Date:

Signed for and on behalf of THE NORTH YORK MOORS NATIONAL PARK AUTHORITY

Signature:
Name:
Position:
Date:

CONTACT POINTS

The North Yorkshire County Council

Name:
Office address:
Tel No:
E-mail Address:

The City of York Council

Name:
Office Address:
Tel No:

The North York Moors National Park

Authority

Name:

Office Address:

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Tel No:

E-mail Address:

The Project

Project overview

The preparation and adoption of a statutory joint minerals and waste local plan for the North Yorkshire County Council, City of York and North York Moors National Park areas in accordance with a project plan agreed jointly by the parties. That project plan will provide for gathering evidence, carrying out consultation, and submitting the draft local plan for independent examination prior to its adoption by all parties to this MoU.

The Key Objectives

To undertake tasks as necessary to deliver the key stages of the agreed project plan in accordance with the timescales established in the project plan

To keep the agreed project plan under review and to seek and agree amendments to the project plan as necessary during the life of the project

To contribute appropriate resources as necessary to support the delivery of the project and in accordance with the principles established in this MoU

To proceed to adopt the joint minerals and waste local plan following independent examination or to undertake any necessary subsequent steps to make the Plan ‘sound’ and then proceed to adoption.

The existing position and contributions already made

Agreement has been reached in principle on the production of a joint minerals and waste local plan and that all parties have contributed equally to the development of the joint project plan and that the intention is to implement the joint project upon confirmation of member agreement within all three authorities and upon completion of the MoU.

Contributions

1. Each party will contribute staff resources as necessary to support delivery of the project in accordance with the agreed project plan and in accordance with the allocation of tasks as may be agreed by the Project Group

Exclusions from joint costs

2. Each party will bear its own costs with regard to obtaining any additional evidence necessary to ensure that an adequate and compatible evidence base for the plan exists across the joint area, where relevant and reasonable, and the costs of any additional consultation activity not provided for in the project plan or agreed by the project board

In particular this will include, where not already done, an audit of current minerals and waste sites/infrastructure, the identification of minerals resource distribution and potential minerals safeguarding and consultation areas, assessment of the distribution of potentially viable sand and gravel resources, analyses of existing waste arisings data and current capacity, and a projection of future arisings and capacity gap.

The costs of specialist and professional support for work relating to any party's specific interests in the Project are not to be a joint cost of the Project.

Joint Costs

3. The costs of any joint evidence base work including matters procured (whether jointly or by any one or more parties) for the purposes of the Project, joint consultation activity and document production and printing to be apportioned on the following basis 55:25:20 (NYCC:CYC:NYMNPA) or as is appropriate and reasonable where costs have not arisen proportionately across the three authorities.
4. The joint costs of Examination in Public (including Inspector's fees, legal fees and any other professional support fees deemed to be necessary by the project board, Programme Officer and venue costs) to be apportioned on the following basis 55:25:20 (NYCC:CYC:NYMNPA) or as is appropriate and reasonable where costs have not arisen proportionately across the three authorities.

Costs of and following adoption

5. Each party shall bear its own costs in relation to adoption and any post adoption activity relating to the joint plan. For the avoidance of doubt this includes the costs of any legal challenge to the adopted plan.

