

# Norfolk Minerals and Waste Local Plan

## **Minerals Site Specific Allocations Development Plan Document (DPD) – Single Issue Silica Sand Review**

### **Duty to Cooperate Statement**



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### **Duty to Cooperate Statement**

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## 1. Introduction

The Duty to Cooperate (DtC) is a legal duty placed on a number of public bodies including Mineral Planning Authorities and Local Planning Authorities, by Section 110 of the Localism Act 2011. The DtC is intended to ensure that strategic cross-boundary planning issues are taken into account following the abolition of Regional Spatial Strategies, and to ensure that certain public bodies are engaged with during the plan making process.

Section 110 makes various amendments to the Planning and Compulsory Purchase Act 2004 to require prescribed public bodies to cooperate in order to plan for sustainable development. This list of bodies has been amended by subsequent legislation and a list of the current bodies are:

|                                    |   |
|------------------------------------|---|
| Environment Agency                 | The Office of Rail Regulation           |
| Natural England                    | Highways Agency                         |
| Local Nature Partnerships          | Transport for London (where applicable) |
| Mayor of London (where applicable) | Integrated Transport Authorities        |
| Civil Aviation Authority           | Highway Authorities                     |
| Homes and Communities Agency       | Local Enterprise Partnerships           |
| Clinical Commissioning Groups      | Marine Management Organisation          |
| The NHS Commissioning Board        | Local Planning Authorities              |
| Historic England                   |   |

## 2. The Duty and the Plan making process

The Plan making process is covered by a Statutory Instrument (SI); The Town and Country Planning (Local Planning) (England) Regulations 2012. Part 4 includes the list of prescribed bodies to which the DtC applies in relation to planning authorities.

The DtC is a required part of the plan making process where sustainable development or the use of land would have a significant impact on at least two local planning areas or on a planning matter that falls within the remit of a County Council.

Where the development or use of land is such that the DtC is a required part of the plan process, the planning process must develop planning policies that address the cross-boundary impacts. Councils and public bodies are also required by the DtC to 'engage constructively, actively and on an ongoing basis' in the development of strategic policies, and that in order to achieve this councils should consider joint approaches to plan making.

One of the amendments to the Planning and Compulsory Purchase Act 2004 made by the Localism Act 2011 was the inclusion of a new Section 33A. This section defines the duty and the general requirements necessary to meet it.

A new sub-section Section 20(5c) of the Planning and Compulsory Purchase Act 2004 defines what should be tested as part of the independent examination of draft plans submitted to the Secretary of State; compliance with the DtC now forms part of this examination process.

The Planning Inspector appointed by the Secretary of State to conduct the independent examination must assess if the DtC has been complied with in the development of the draft Plan. If that assessment concludes that the DtC has not been met, the Plan will fail the legal compliance test and cannot continue through the examination process.

It should be noted that the DtC is not a 'Duty to agree' and an Inspector may find that the DtC has been complied even though the Planning Authority responsible for drafting the Plan has been unable to reach agreement on all planning issues with all the prescribed bodies.

### **3. Collaborative working groups in relation to the DtC**

Norfolk County Council, in its capacity as the Mineral Planning Authority, carries out a number of activities in order to engage with other local planning authorities and the bodies prescribed in Part 4 of the 2012 Regulations.

These activities are relevant to the plan making process as it has been applied to the Single Issue Review of Silica Sand.

The National Planning Policy Framework makes references to the DtC in relation to a number of strategic planning matters, which includes the provision of minerals, and environmental assessments such as those made under the Habitats Regulations.

There are a number of groups to which the Mineral Planning Authority belongs which facilitate constructive engagement on planning matters.

#### **The Norfolk Strategic Planning Group**

This is a group formed in 2010 following the abandonment of the RSS review to continue the work carried out previously by the RSS review Group. The NSPG is an officer level group which facilitates discussion on strategic planning issues in Norfolk. It meets on a monthly basis.

Officers from the Local Planning Authorities in Norfolk, the Highway Authority, the Mineral and Waste Planning Authority, Public Health and Economic Development at a county level attend, together with representatives from the Environment Agency. This group provides officer support to the Norfolk Duty to Cooperate Member Forum.

#### **Norfolk Strategic Planning Member Forum**

This forum was formed in 2013 and is a member led group, whose membership includes the portfolio holders for Strategic Planning in Norfolk's Local Planning Authorities, with an open invitation to attend for the planning portfolio holders and officers of Suffolk, Cambridgeshire and Lincolnshire. It meets on a quarterly basis. It is chaired by a councillor elected by the forum on an annual basis.

The forum is supported by the Norfolk Strategic Planning Group. The forum has an agreed Terms of Reference:

**Purpose**

*The purpose of the forum is for members to discuss the strategic issues that are planning related and affect all or the majority of local planning authorities and others affected by the Duty to Co-operate under the Localism Act's 'Duty to Co-operate'.*

*The forum will discuss the implications of these issues for plan-making, or other activities that contribute towards plan-making under the duty (such as evidence base etc) and work to achieve a common understanding or approach to that issue.*

**Objectives**

- 1. To discuss strategic planning issues that affect local planning authorities*
- 2. To understand the viewpoints of other authorities*
- 3. To consider comment upon and potentially commission relevant supporting evidence base to support local plans (as appropriate)*
- 4. To consider the need for joint or coordinated working on particular topics or evidence*
- 5. To co-ordinate if at all possible timelines for the production of plans*

*The Forum agreed to meet quarterly, with other special meetings as appropriate*

The Forum has started a process of gathering joint evidence to inform the preparation of Local Plans in Norfolk.

**The Norfolk Strategic Services Coordinating Group**

This group was formed in 2008 to allow discussion of the overall development planned for Norfolk, with aims to co-ordinate the provision of strategic services and their influence on plans. The group meets on a quarterly basis.

The members of the group are:

|  |   |
|--|---|
| All Norfolk's Local Planning Authorities | Historic England                                      |
| Marine Management Organisation           | Norfolk Fire and Rescue                               |
| Environment Agency                       | Public Health   |
| Highways Agency                          | Norfolk Property Services                             |
| UK Power Networks                        | RSPB  |
| Anglian Water                            | Norfolk and Suffolk NHS Foundation Trust              |
| NHS England                              | Norfolk Strategic Registered Social Landlord Alliance |
| Norfolk and Suffolk NHS Foundation Trust |   |
| Highways Authority                       | RAF Marham  |

### **Leziate Quarry Liaison Group**

This group was formed in the 1980's to allow discussion regarding current and future operations regarding the Leziate quarry and processing plant. The group normally meets on a six monthly basis and is hosted by Sibelco UK Ltd the silica sand operator. The Group is made up of representatives of Norfolk County Council as the Mineral Planning Authority (normally officers from Mineral Policy and Monitoring and enforcement), Sibelco UK Ltd, Leziate Parish Council, East Winch Parish Council, and Middleton Parish Council, the County Councillor for the local division, and the Borough Councillor for the local division.

### **Local Plan meetings between Norfolk County Council and Norfolk's Local Planning Authorities**

These meetings have been held since 2004 to allow discussions regarding the current Local Plan situation in each Local Planning Authority, to ensure that the parties to the meeting are aware of potential issues and to promote meaningful dialogue. The Mineral Planning Authority has been attending since 2011. The meetings are held on six monthly basis. The meeting is made up of officers of Norfolk County Council in its capacities as the Mineral Planning Authority, Highway Authority, Local Education Authority, Lead Local Flood Authority, Public Health Authority, the Infrastructure and Economic Growth Team, and the Local Planning Authority.

### **East of England Aggregates Working Party**

This group is the current iteration of what was previously the Regional Aggregates Working Party for the East of England. This group was originally established in the 1970's.

The East of England Aggregates Working Party (EoEAWP) consists of representatives of all Mineral Planning Authorities for the former East of England Regional Area, the Mineral Products Association, the British Aggregates Association, the Environment Agency, the Marine Management Organisation, the Department for Communities and Local Government, and the major mineral operators, inert recycling and demolition companies in the East of England.

The group's purposes include: providing a forum for discussion related to the supply and demand of aggregates, collecting data on the supply and demand for aggregates, including reserves and landbanks, to be published in an Annual Monitoring Report. The EoEAWP also provides technical advice to Mineral Planning Authorities in the preparation of their draft Local Aggregate Assessments. While the EoEAWP does not provide a forum specifically for the discussion of silica sand issues, there are a number of Mineral Planning Authorities and operators who have silica sand interests and these meetings provide opportunities to update the AWP on the progress of Minerals Local Plans, including silica sand, and informal discussion.

#### **4. The Single Issue Review of silica sand and its impacts in relation to the DtC**

The silica sand resource in Norfolk is found entirely within the administrative boundary of the Borough Council of King's Lynn and West Norfolk. There is one processing plant for silica sand which is also located within the Borough Council area at Leziate. The majority of silica sand processed in Norfolk is used in glass making and is transported to glassworks in northern England by rail from the railhead located at the processing plant.

The NPPF is clear that Mineral Planning Authorities should plan for a steady and adequate supply of industrial minerals (such as silica sand) to provide sufficient feedstock to meet the demand for materials from the processing plants within their planning areas.

The Pre-submission publication document of the Silica Sand Review proposes to allocate one specific site and six areas of search for silica sand extraction up to the end of the plan period in 2026. The proposed site and areas of search cover an area of 1,405 hectares. It is estimated that an area of approximately 40 hectares of extraction would need to take place to provide sufficient silica sand to meet the planned demands of the processing plant up to the end of 2026.

Therefore, the Silica Sand Review seeks to provide for all the identified demand for silica sand in the Norfolk Minerals and Waste Core Strategy from within the Norfolk Mineral Planning Authority area. There is no requirement for another Mineral Planning Authority to plan to help meet Norfolk's demand for silica sand as the feedstock for the processing plant at Leziate. Norfolk County Council maintains contact with other Mineral Planning Authorities, with silica sand resources, providing periodic updates on the plan process and consulting with them during the preparation of the Silica Sand Review. The MPAs consulted were: Cheshire East Council, Worcestershire County Council, Surrey County Council, Staffordshire County Council, Nottinghamshire County Council, North Yorkshire Council, North Lincolnshire Council, Kent County Council, and Central Bedfordshire & Bedford Borough Council shared minerals planning service.

The Borough Council of King's Lynn and West Norfolk is the only planning authority area impacted by the Silica Sand Review as all the identified resource in Norfolk occurs within that area. Discussions with the Borough Council regarding silica sand have taken place on a regular ongoing basis, and have been constructive. Although there are differences of view regarding mineral safeguarding, it is not considered that this raises any issues in relation to the DtC.

Norfolk County Council has carried out a number of formal and informal consultations during the Silica Sand Review. The six week Initial Consultation stage in March and April 2015 was a public consultation regarding the scope and methodology for the Silica Sand Review. The comments received were taken into account in the methodology used to define areas of search for silica sand extraction.

Following this consultation the Mineral Planning Authority informally requested the views of a number of bodies (including Natural England, Historic England, the Environment Agency and the Borough Council of King's Lynn and West Norfolk) regarding the appropriateness of the proposed specific site and ten defined Areas of Search.

Their comments were incorporated into the Preferred Options Consultation document. The six week Preferred Options Consultation stage in November and December 2015 was a public consultation regarding the suitability of one proposed site and ten defined areas of search for future silica sand extraction.

At each stage of consultation the prescribed bodies have been consulted, although for some bodies such as the Civil Aviation Authority and the Office of the Rail Regulator while the consultation has been acknowledged, no substantive response was received.

## **5. The Single Issue Review of silica sand and its impacts in relation to the Dtc and Section 58(3) of the Marine and Coastal Act 2009**

The Marine Management Organisation is responsible for Marine Planning in England and is a prescribed body in terms of the DtC. Additionally, Local Authorities have duties under the Marine and Coastal Act 2009. The MMO has been engaged during the plan making process for the Silica Sand Review. Section 58(3) of the Marine and Coastal Act 2009 requires that a public authority must have regard to the appropriate marine policy documents in the exercise of any function capable of affecting the whole or any part of the UK marine area which is not an authorisation or enforcement decision. Land-use planning such as the Silica Sand Review would be a function covered by the requirements of Section 58(3).

The East Inshore and East Offshore Marine Plans were adopted in April 2014, and are the relevant marine plans for the area covered by the Silica Sand Review.

The East Marine Plans reach landwards to the mean high water mark with land-use planning reaching the mean low water mark, meaning a shared responsibility between the Marine Management Organisation (MMO) and planning authorities for land-use planning in this inter-tidal zone.

The safeguarded mineral resources defined within the Norfolk Minerals and Waste Plan extends into the intertidal zone within which the Marine Plan also extends.

The East Marine Plans contain no specific policies regarding silica sand extraction. The East Marine Plans contain policies AGG1, AGG2 and AGG3 which address marine aggregate extraction. No areas covered by these policies extend into the intertidal zone adjacent to the Mineral Safeguarding Area for silica sand defined within the Norfolk Minerals and Waste Plan.

The Silica Sand Review Preferred Options consultation sought views on ten potential areas of search. None of the potential areas of search extended into areas within

the intertidal zone or which were considered likely to affect the marine planning zone. The Pre-submission document contains six areas of search and one specific site.

Norfolk County Council as the Mineral Planning Authority has had regard to the East Inshore and Offshore Marine Plans in the plan-making process for the Silica Sand Review and concludes that the Silica Sand Review will not affect the land-use or activities covered by the Marine Plans.

## **6. Responses made by DtC bodies in relation to the Initial Consultation Stage**

The Initial Consultation stage took place for six weeks during March and April 2015.

The Environment Agency in its response to the Initial Consultation document made a number of comments and highlighted a number of potential issues in relation to the definition of Areas of search. These included:

- support for the hydrological catchment based approach,
- that enhanced evidence areas should be based on the sensitivity of the qualifying features to the effects of mineral extraction,
- that silica sand extraction would be suitable in all flood zones, subject to a site Flood Risk Assessment,
- that it would be unlikely that any extraction sites would be suitable for landfilling with waste post extraction,
- that reference should be made to the Environment Agency's groundwater protection policy.

Natural England in its response to the Initial Consultation document made a number of comments and highlighted a number of potential issues in relation to the definition of Areas of search. These included:

- support for the hydrological catchment based approach,
- increased buffer distance between the Wash and any extraction,
- that enhanced evidence areas should be based on the sensitivity of the qualifying features to the effects of mineral extraction,
- consideration of potential increasing the buffer for ancient woodlands,
- recommendation to exclude Best and Most Versatile agricultural land,
- that the Scoping report for the Sustainability Appraisal had outlined the relevant baseline information.

Highways England in its response to the Initial Consultation document commented that consideration should be given to the quality and character of road junctions at access points onto the strategic road network.

Historic England in its response to the Initial Consultation document made a number of comments and highlighted a number of potential issues in relation to the definition of Areas of search. These included support for the acknowledgement of designated heritage assets but concern was expressed that non-designated heritage assets had not been given sufficient value. Their response also comments on the holistic nature of the historic environment and the difficulties in having a fixed standoff distance.

The Marine Management Organisation in its response to the Initial Consultation document made a number of comments and highlighted a number of potential issues in relation to the definition of Areas of search. These included highlighting the potential for the overlap of marine and terrestrial planning as an area of the inter-tidal zone is within the remit of both plans, and advised that Norfolk County council should refer to publish guidance on marine/terrestrial planning in the preparation of the Silica Sand Review.

The Borough Council of King's Lynn and West Norfolk in its response to the Initial Consultation document made a number of comments and highlighted a number of potential issues in relation to the definition of Areas of search. These included:

- noting the need for careful scrutiny of potential areas of search in relation to the Wash,
- that the potential for visual impacts should be included within the assessment of ancient woodland,
- support for the exclusion of allocated sites in the Borough Council's Local Plan from potential areas of search,
- and the need for a balance to be struck between the productive value of agricultural land and the importance of silica sand.

The following bodies returned 'no comment' responses to the Initial Consultation stage, North Norfolk District Council, Norwich City Council, Breckland District Council, Broadland District Council, South Norfolk District Council, Surrey County Council, and the Office of Rail Regulation.

## **7. Responses made by DtC bodies in relation to the Preferred Options consultation stage**

The Preferred Options Consultation stage took place for six weeks during November and December 2015.

The Environment Agency in its response made a number of comments and highlighted a number of potential issues in relation to the proposed Areas of search and specific site allocation. These included comments in relation to flood risk, groundwater, and Water Framework Directive assessments.

Natural England in its response made a number of comments and highlighted a number of potential issues in relation to the proposed Areas of search and specific site allocation. These included support for the recognition in Chapter 8 of the document for potential impacts and mitigation of silica sand extraction, the inclusion of the requirement for Hydrogeological Risk Assessments, and support for the criteria used to define the potential Areas of Search. In relation to the Habitats Regulation Assessment they agreed with the conclusion that no likely significant effect would occur to Roydon Common and Dersingham Bog SAC & Ramsar sites, and that a further assessment would be required for the Wash and North Norfolk Coast SAC.

Historic England in its response made a number of comments and highlighted a number of potential issues in relation to the proposed Areas of search and specific site allocation. These included welcoming the consideration given to their comments on the Initial consultation stage, and that as any extraction area would be

significantly smaller detailed assessment of potential impacts would have to be made at the application stage.

Highways England in its response commented that the Preferred Options would be unlikely to affect the safety and operation of the Strategic Road network, but that detailed comments may be required as extraction proposals come forward.

The Highway Authority in its response made a number of comments and highlighted a number of potential issues in relation to the proposed Areas of search and specific site allocation. They welcomed the inclusion of comments made during discussions which took place while the Preferred Options was being drafted.

Public Health in its response, commented that no concerns were raised regarding silica sand as a material and that any issues would related to potential amenity impacts (such as noise and traffic).

The Borough Council of King's Lynn and West Norfolk made a number of comments and highlighted a number of potential issues in relation to the definition of Areas of search. These included recognising the need for the Silica Sand Review and the designation of the Specific site and the potential Areas of Search to address the shortfall in silica sand allocations, and that the Borough Council were not objecting to, nor had any adverse comments to make regarding the designation of the specific site or the Areas of Search. However, they had a number of matters of detail in relation to the identification and mitigation of potential impacts by any proposed extraction.

Surrey County Council noted that they were an MPA with similar high quality silica sand deposits, and that they supported the aims of the Silica Sand Review, but had no specific comments to make.

Kent County Council supported Norfolk County council's approach to the Silica Sand Review and had no specific comments to make other than to note that the methodology appears to accord with relevant planning policy and guidance.

Worcestershire County Council outlined the fact that the silica sand deposit found within their area is of a different composition which is suitable for different end-uses. They concluded that they did not consider that the Silica Sand Review raised issues which were a strategic cross-boundary matter which would invoke the Duty to Co-operate between the two authorities.

The following bodies returned 'no comment' responses to the Initial Consultation stage, South Norfolk Council, Breckland District Council, Broadland District Council, Peterborough City Council, Waveney District Council, and the Office of Rail Regulation.

## **8. Conclusion**

It is concluded that the Duty to Co-operate has been complied with in the preparation of the Single Issue Silica Sand Review. The Silica Sand Review, as a strategic matter in relation to the DtC, has been the subject of constructive ongoing and proactive discussion with relevant bodies.