



Report for:	Cabinet 12 th February 2012	Item Number:	
Title:	North London Waste Plan - Non-adoption and revision.		
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Ward(s) affected: All	Report for Key/Non Key Decisions: Key Decision		

1. Issues under consideration

- 1.1. This report considers the best way forward for the North London Waste Plan (NLWP). On 31st August 2012, Planning Inspector Andrew Mead gave his verdict on the NLWP and the duty to co-operate. He concluded that the NLWP does not comply with the legal requirements of the Duty to Co-operate because there had not been “constructive, active and ongoing engagement” during the NLWP’s preparation between the North London Councils and the planning authorities to which significant quantities of waste are exported, mainly for landfill.
- 1.2. In August 2012, the Inspector gave the boroughs two options following his determination that the NLWP did not comply with the duty to co-operate. One was to invite the Inspector to write his report which will recommend *non-adoption* of the plan. The other was for the boroughs *to withdraw* the plan.
- 1.3. The Inspector advised the boroughs to go back to plan preparation to remedy the deficiencies he identified in meeting the duty to co-operate and gave an indication as to how the duty to co-operate could be met in the next submission of the plan.
- 1.4. This report recommends inviting the Inspector to write his report to the boroughs which will recommend *non-adoption* of the NLWP and for the boroughs to draw

up the next version of the NLWP following both Regulation 18 and 19 of the 2012 Regulations, while meeting the Duty to Co-operate.

- 1.5. The boroughs have agreed to recommend the “*non-adoption*” route for the NLWP rather than to “*withdraw*” it because this option retains the NLWP documents in the public arena whilst allowing a review of the evidence and the update of the NLWP with full public consultation, whilst meeting the requirements of the Duty to Co-operate.

2. Cabinet Member introduction

- 2.1 National and regional planning policy requires local planning authorities to produce a waste planning document to identify sites within their area suitable for waste management use.
- 2.2 The re-development of the waste plan will involve public consultation and the opportunity to fulfil the new duty to co-operate regulations.

3. Recommendations

- 3.1 It is recommended that Cabinet:
 - i. invite the Inspector to write his report which will recommend non-adoption of the NLWP; and
 - ii. agrees the Council to draw up the next version of the NLWP following both Regulation 18 and 19 of the 2012 Regulations, while meeting the Duty to Co-operate.

4. Alternative options considered

- 4.1 There are no alternative options. This planning policy is currently required and local authorities are required to carry out the planning policy development and site identification process.

5. Background information on the NLWP

- 5.1 The seven north London Boroughs of Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest agreed to co-operate in drawing up a joint waste plan. Work on the North London Waste Plan (NLWP) began in 2007. The NLWP was submitted in February 2012 and the hearings were scheduled for June 2012.

- 5.2 Original Milestones for the NLWP.

Timeline for NLWP

NLWP commencement	Jan 2007
Issues and options consultation	October 2008
Preferred options consultation	May 2011
Proposed submission version consultation	May 2012
Submission to Planning Inspector	February 2012
Hearing	June 2012
Inspector's decision on duty to co-operate	August 2012

5.3 On 8th February 2011 this Cabinet agreed to:

- *approve the North London Waste Plan (as set out in Annex 1 of that report) for publication and subsequent submission to the government;*
- *approve that the Director of Urban Environment, in consultation when appropriate with the Cabinet Member for Planning and Regeneration, and in conjunction with the other north London boroughs, are authorized to submit appropriate changes to the North London Waste Plan in the run up to, and during, the public examination into the document, in response to objectors' submissions, requests from the Planning Inspector and any emerging evidence, guidance or legal advice.*
- *refer this report to the meeting of the full Council in March 2011 for consideration.*

5.4 On the first day of the hearing the Inspector only heard submissions about the Duty to Co-operate and then suspended the hearings. After receiving submissions, both legal and evidential, about the duty to co-operate, the Inspector issued his decision on 31 August that the NLWP did not comply with the duty, as required, and that he was not therefore intending to examine the plan any further.

5.5 Since the examination of the NLWP has not yet been formally concluded, the Inspector is awaiting a decision from the boroughs on which of the two options to move the plan forward has been recommended.

5.6 Nominations for sites will be assessed in their appropriate context in line with the Council's key priorities and policies, and taking account of future planning and regeneration proposals on that land.

6. The Duty to Co-operate

6.1 The Duty to Co-operate came into effect on 15 November 2011 as part of the Localism Act. The North London Waste Plan (NLWP) was submitted three months later on 28 February 2012. The Act imposed a duty to co-operate with certain bodies from the beginning to the end of the process of drawing up a plan. At the time the NLWP had already been in preparation for over 5 years and was substantially completed awaiting submission and so it was always going to be a

challenge to meet this duty. No transitional arrangements were set up to assist plans that had been in preparation for some time.

7. Requirement for the NLWP?

- 7.1 Identifying sufficient sites for the management of waste is a requirement for local planning authorities. This is set out in Planning Policy Statement 10: Planning for sustainable waste management (March 2011) which remains in force, despite the publication of the National Planning Policy Framework (NPPF), until the National Waste Management Plan is published.
- 7.2 The Chief Planner at the DCLG wrote to planning authorities on 10 January 2011 to remind them of the importance of putting in place local waste plans to ensure that the UK complies with European legislation. The EU Waste Framework Directive requires waste planning authorities to have waste management plans in place. As a result of the Localism Act 2011 any fines for non-compliance with the Directive can be passed onto local authorities.
- 7.3 The seven boroughs are bound by a Memorandum of Understanding to undertake a joint waste plan. There is a long history of joint work on waste matters between the seven boroughs. A lot of the joint work that has been done to date will be put to good use in completing the new waste plan, site identification is easier over seven boroughs and it will be cheaper to complete the plan jointly. A borough setting off on its own will have to find sufficient waste sites within its own boundaries and negotiate separately with each of the landfill authorities.

8. Next steps for the development of the NLWP

- 8.1 The 2012 Town Planning Regulations¹ set out a new two stage process for plan making. Regulation 18 is an initial stage in which the plan making authority writes to all stakeholders and during which issues can be discussed. Regulation 19 is the consultation on proposed submission version of the plan. Following that is the stage where the plan is submitted for examination.
- 8.2 In order to meet the duty to co-operate the boroughs need to go back to the beginning of the process. This is because the National Planning Policy Framework (NPPF) states that

“Co-operation should be a continuous process of engagement from initial thinking through to implementation.”

¹ The Town and Country Planning (Local Planning) (England) Regulations 2012

- 8.3 In other words for those organisations to whom the boroughs decide they owe the duty to co-operate, they need to go back to the Regulation 18 phase.
- 8.4 As part of the work of bringing back a plan to submission in a couple of years time, the boroughs will need to carry out work to revise and refresh the evidence base regarding waste data and sites to ensure that the plan that is submitted is based on the best and most up to date evidence. It would be in line with boroughs' Statements of Community Involvement to do this in conjunction with all parties. The work that has been carried out in the past five years is clearly relevant together with all the views that have been received by the boroughs.
- 8.5 As a result, planning officers recommend that the whole plan go back to the Regulation 18 stage so that all aspects of the plan can be refreshed and improved with the involvement of all parties. Regulation 18 does not stipulate how this stage has to be carried out and so it is up to the boroughs to devise a programme that will enable public involvement while having to anyway undertake the duty to co-operate work.
- 8.6 To meet the duty to co-operate, discussions with other waste planning authorities to whom North London sends waste to be land filled have already begun and officers are drawing up a work programme that will enable the duty to be met.
- 8.7 In order to be able to start again at Regulation 18, the boroughs need to be able to disengage from the last plan. The Inspector gave the boroughs two options. One was to invite the Inspector to write his report which will recommend *non-adoption* of the plan. The other was for the boroughs to *withdraw* the plan.
- 8.8 Officers' recommendation is for the boroughs to ask the Planning Inspector to write his report which will **recommend non-adoption of the plan**. The evidence base for the previous plan and the representations that have been received can be saved and used in the next version of the plan. The main advantage of the non-adoption route would be that it would enable work to start on the new plan faster. This is on the basis that a decision to ask the Inspector to recommend non-adoption could be done under delegated powers in each borough as a matter arising from the examination. This will enable work on the new waste plan to start sooner than if the withdrawal route is pursued at this stage.
- 8.9 The main advantage of the withdrawal route is that it avoids confusion in the minds of the public during consultation on the new plan about the status of the old one. One way of ending any possible confusion about the new plan, under either option, would be to give the new plan a different name which would give a clear sign of intent.

9. Timetable

- 9.1 If the decision to restart can be made fairly quickly by all Councils, work on the new plan can commence shortly. The proposed milestones for the new plan are:

Letter to go out announcing start of new plan	March 2013
Start engagement with counties and others on duty to co-operate	March 2013
Council approval of initial consultation document	Spring 2013
Consultation and carrying out further work for Plan	Summer 2013
Production and formal agreement by Boroughs of proposed submission version of Plan	By Feb 2014
Consultation on proposed submission version of the Plan	June/July 2014
Consideration of representations followed by Submission of Plan	Oct 2014
Hearings	Feb 2015
Inspector's report	August 2015
Adoption	Autumn 2015

9.2 This timetable is indicative only at this stage and requires further detailed work.

10. Pinkham Way

10.1 The Pinkham Way site (former Friern Barnet sewage works) is to have its current planning application withdrawn (see below). The application to register the site as a town or village green remains and is to be independently assessed in March 2013, with the final decision being made by the Haringey Licensing Committee.

11. Cost

11.1 Up to the end of last financial year (2011-12), over 6 financial years, the boroughs between them had spent £723, 518 in direct costs on the NLWP. As the costs are shared, this equates to £103,360 per borough over the six years and averages out at £17,226 per borough per year.

11.2 Further work will require expenditure over another four years, including this year, of £850,000, equivalent to £30,000 per borough per year.

12. What does this mean for the NLWA procurement?

12.1 The NLWP being carried out by the seven boroughs as planning authorities is different from the activities of the seven boroughs as waste collection authorities as partners in a joint waste disposal authority, the North London Waste Authority (NLWA). The NLWP is required to take into account the published strategies of the NLWA to deal with municipal waste but it also needs to plan for business and construction waste in addition to municipal waste.

12.2 The NLWA is currently in the closing stages of a procurement programme for new contracts to manage municipal waste in North London. This is running to a

separate timetable and under different legislation and is not affected by the Inspector's decision.

- 12.3 The NLWA is to withdraw the current "on hold" planning application (submitted in May 2011). There is no proposed date for the submission of any new application and the NLWA has stated that: "Subject to a successful planning application for new facilities at Edmonton, it is likely that plans for Mechanical Biological Treatment facilities at Pinkham Way [the former Friern Barnet sewage works] will not need to be taken forward, but this will become clearer in due course."
- 12.4 Any planning application submitted for Pinkham Way [the former Friern Barnet sewage works] will undergo full public consultation before the application is considered by Haringey Members at Planning Committee.

13. Comments of the Chief Finance Officer and financial implications

- 13.1 The cost of drawing up a new version of the North London Waste Plan is estimated to be around £30,000 per annum. There is no specific budget allocated for this work and in previous years the cost has been covered from wider Place and Sustainability budgets.

14. Head of Legal Services and legal implications

- 14.1 The duty to cooperate under s. 33A Planning and Compulsory Purchase Act 2004 is to "engage constructively, actively and on an ongoing basis." The Inspector has indicated that he will recommend non-adoption because this duty has been breached. This is on the basis of section 20 (5) of the Act which states that one of the express purposes of his independent examination is to determine whether the section 33A duty has been satisfied.
- 14.2 The Inspector in his decision presents this Authority with a choice of withdrawal or to formally recommend non-adoption. He appears to favour withdrawal and goes on to suggest possible ways in which the duty to cooperate could be discharged following withdrawal with the availability to recommence the process at an earlier consultation stage without having to re-start from scratch.
- 14.3 The recommendation to this Report is therefore contrary to what the Inspector appears to prefer. The advantage of following the recommendation of this Report is that when the Inspector gives his decision of non-adoption there is likely to be clear guidance from the Secretary of State on what will satisfy the section 33A duty to cooperate. However this guidance from the Secretary of State (as opposed to the Inspector) may not be available if the matter is withdrawn. The disadvantage is that upon a determination not to adopt, the whole process of formulation and consultation will require re-commencement with the costs implications inherent in that.

14.4 The Inspector is likely to recommend non-adoption without modifications so that the document cannot be adopted by the Council under section 23 of the Act. The alternative power to withdraw is contained in section 22 of the Act.

15. Equalities and Community Cohesion Comments

15.1 The Council will need to be mindful of the Public Sector Equality Duty (PSED): s149 Equality Act 2010 when considering sites within the development of the NLWP.

15.2 There will be an Equalities Impact Assessment of the new waste plan as it is developed to assess the impacts upon all target groups and to prevent an adverse discriminatory impact upon specific target groups.

16. Head of Procurement Comments – n/a

17. Policy Implication

17.1 The North London Waste Plan is a key document of the Haringey Local Plan suite of planning policy documents.

17.2 The North London Waste Plan links with the North London Waste Strategy by identifying sites suitable for municipal and commercial waste management.

18. Reasons for Decision

18.1 In line with section 20 of the Planning and Compulsory Purchase Act 2004.

19. Use of Appendices

19.1 No appendices are attached to this document.

20. Local Government (Access to Information) Act 1985