

North Tyneside Council

Report to Cabinet

Date: 29 July 2019

ITEM 5(e)

Title: Adoption of the Coastal Mitigation Supplementary Planning Document

Portfolio: Deputy Mayor

Cabinet Member:

Councillor Bruce Pickard

Report from Service Area:

Environment, Housing and Leisure

Responsible Officer:

Phil Scott – Head of Environment, Housing and Leisure

Tel: (0191) 643 7295

Wards affected:

All Wards

PART 1

1.1 Executive Summary:

This report outlines a proposed Coastal Mitigation Supplementary Planning Document (SPD) for adoption to inform the consideration of planning applications for development. Following delegated approval on 1 May 2019 to publish a draft Coastal Mitigation SPD, public engagement with a range of key stakeholders took place between May 17 2019 and 1 July 2019. The feedback received from this consultation has been considered to help prepare this proposed SPD.

The SPD is required to support implementation of policy DM5.6 *Management of International Sites* within the North Tyneside Local Plan adopted by Full Council in July 2017. This policy sets out a range of criteria to ensure that planning applications in North Tyneside do not lead to adverse effects upon international sites. International sites of relevance to North Tyneside are locations on the north east coast that provide important habitat for protected bird species and important geological features. These locations are the Northumbria Coast Special Protection Area (SPA), which extends along the coastline between the Tweed and Tees Estuaries and includes the rocky foreshore at Browns Point, St Marys and the mouth of the Tyne; and the Durham Coast Special Area of Conservation (SAC) which extends from Blackhall Rocks to Trow Rocks, south of the Tyne. Given their location, both designations could experience increased disturbance from visitors associated with new development in this Borough. The Authority has a duty under the Conservation of Habitats and Species Regulations 2017 to ensure that it does not give consent, such as through a planning application, to any plan or project that could have an adverse effect upon the integrity of an SPA or SAC.

Evidence prepared to inform development of the Local Plan established that any development that potentially increases the number of visitors to the coast, such as new homes or visitor accommodation, could have a potential adverse effect upon European sites. The SPD set out in this report has been prepared to provide clear guidance for applicants on the likely impact of their proposals upon European sites and potential mitigation. The SPD identifies for consultation, a proposed standard charge for new

development and identifies the creation of a Coastal Mitigation Service and delivery of physical projects as the primary form of mitigation against potential adverse effects.

1.2 Recommendation:

It is recommended that Cabinet:

- (1) Note the responses received to the engagement on the draft Coastal Mitigation Supplementary Planning Document; and
- (2) Agree to adopt the proposed Coastal Mitigation Supplementary Planning Document.

1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 21 June 2019.

1.4 Council Plan and Policy Framework

This report presents a Supplementary Planning Document (SPD) based upon the North Tyneside Local Plan for adoption and contributes to a number of the objectives of the Our North Tyneside Plan 2018-20, including:

- Our places will be great places to live, offer a good choice of quality housing, provide a clean, green, healthy, attractive, safe and sustainable environment, be a thriving place of choice for visitors, be great places to live;

The SPD provides guidance that supports the Local Plan's objectives specifically to support protection of the environment and environmental value. The key policies are:

- S5.4 *Biodiversity and Geodiversity*
- DM5.5 *Managing effects on Biodiversity and Geodiversity*
- DM5.6 *Management of International Sites*

These policies commit the authority to the protection, enhancement, management and creation of biodiversity where appropriate through the development process. This is in line with national planning policy as set out in Chapter 15 *Conserving and enhancing the natural environment* of the National Planning Policy Framework (NPPF), and particularly paragraphs 171 and 174 to 177.

1.5 Information:

1.5.1 Requirement for the Coastal Mitigation Supplementary Planning Document

1.5.2 This SPD has been prepared to provide additional guidance and information on the mitigation expected to be required from development within North Tyneside to prevent adverse effects on the habitats and species along our internationally protected coastline. The Northumbria SPA is designated to protect a range of important bird species and the Durham SAC because it is the only example of vegetated sea cliffs on magnesian limestone exposures in the UK.

1.5.3 The Authority has a duty to protect European Sites from adverse effects under European Directive (92/43/EEC) on the Conservation of Natural Habitats and Wild Flora and Fauna (the "Habitats Directive") and the Conservation of Habitats and Species Regulations 2017. A Habitats Regulation Assessment (HRA) concluded that implementation of the Local Plan could cause adverse effects to European Sites through increased recreational

disturbance at the coast. This would arise from development particularly within a 6km buffer zone of the coast, but also with some impacts from a wider catchment as a result of the cumulative impact of overall growth.

- 1.5.4 Local Plan policy DM5.6 *Management of International Sites* recommends a range of actions and mitigation that would be appropriate to avoid or reduce adverse effects upon European Sites. Mitigation agreed for applications to date has involved provision of information to residents regarding the protected sites to raise awareness of the impacts of their activities and measures to make existing parks and open space more attractive. However, there is a limit to the overall effectiveness of such measures and it has become increasingly difficult for schemes to demonstrate effective mitigation for the cumulative impacts of growth could be secured through individually agreed mitigation. This has raised the prospect of applications for development of homes and visitor accommodation in North Tyneside being refused because suitable mitigation of their impacts upon the international designated sites cannot be achieved.
- 1.5.5 Advice received from Natural England has highlighted that if a strategic approach to coastal mitigation was adopted by the Authority a route to securing suitable mitigation of the cumulative impacts of growth could be identified. This strategic approach would collect planning obligations to fund a Coastal Mitigation Service. This service would operate wardens who would identify the most appropriate action required to mitigate the effects of recreational disturbance and undertake many activities in delivery of the recommended mitigation. This could include awareness-raising, monitoring and identifying potential mitigation projects at the coast that could be implemented by the Authority. These projects could include installation of fencing and provision of new footpaths, or other initiatives.
- 1.5.6 Whilst this SPD proposes that securing funding towards a Coastal Mitigation Service is the Authority's preferred method of securing suitable mitigation at the coast, applicants would be free to continue to seek alternative measures to mitigate their impacts upon the coast. This would require submission of further evidence of the impacts of their development and agreement from the Authority and Natural England that impacts would be mitigated.
- 1.5.7 Over the remaining period of the Local Plan to 2032 contributions collected and activities undertaken by the Coastal Mitigation Service will be reported and published on an annual basis. Proposed mitigation identified as required on the basis of on-going monitoring will be considered by a steering group and agreed by the Authority as an Annual Action Plan for Coastal Mitigation. The evidence supporting the proposed mitigation will be published alongside this action plan.
- 1.5.8 Funding of Coastal Mitigation
- 1.5.9 To secure delivery of the approach outlined in the Coastal Mitigation SPD it is recommended that applicants make a financial contribution through a planning obligation connected to the grant of planning permission.
- 1.5.10 For residential development and new tourist accommodation a tariff based approach, where a charge is levied for each additional dwelling or unit of visitor accommodation, is proposed as the most appropriate means of identifying a suitable financial contribution from planning applications. As ascertained within the HRA, development within 6km of the coast is likely to generate higher levels of recreational visitors to the coast. However, overall journey times from all parts of North Tyneside to the coast can be made in under 20 minutes by car and the HRA indicates that effects also arise from growth between 5

miles and 10 miles. Therefore, it is proposed that development in all parts of the borough is required to contribute to the tariff with a greater share of the cost, and a higher rate, funded by development within 6km of the designated sites at the coast.

- 1.5.11 For other development that may lead to an increase in visitor numbers to the coast, the specific impacts arising from each proposal cannot be predicted and a tariff based approach is not considered effective. A financial contribution agreed between the applicant, North Tyneside Council and Natural England is proposed as the most appropriate means of mitigation for such development in most circumstances.
- 1.5.12 A contribution to the tariff means that the applicant has fulfilled their contribution to the recreation impacts of development. However, any other impacts on the internationally designated sites will need to be considered separately, with the developer supplying whatever information the Local Planning Authority requires to undertake a Habitats Regulations Assessment. When engaging in pre-application discussions or through the planning application process, applicants would be advised whether the proposed tariff is sufficient to address the impacts of their scheme or whether additional impacts may arise and further information is required.
- 1.5.13 Calculation of Contribution
- 1.5.14 The level of financial contribution from each planning application for housing development required to support the Coastal Mitigation Service and delivery of physical projects is informed by an estimate of the cost of providing a viable and effective service and the amount of development anticipated to come forward up to 2032 (the life of the North Tyneside Local Plan).
- 1.5.15 The financial cost of delivery of the identified coastal mitigation is comprised of a budget for the delivery of physical projects at the coast, salaries for Coastal Wardens, associated costs and overheads to enable the Coastal Wardens to undertake their day to day activities, and a contingency to allow for continued maintenance should the level of new development decline.
- 1.5.16 The overall cost of delivering the identified mitigation over the Local Plan period to 2032 is £2,231,044.
- 1.5.17 Local Plan policy S4.2(a) *Housing Figures* provides for at least 16,593 homes over the Plan period of 2011/12 to 2031/32. At 2019, 7,939 of these dwellings have been built or already benefit from planning permission. There are therefore 8,654 potential additional dwellings from which a financial contribution could be secured. 4,963 of these potential additional dwellings would be located within 6km of the coast and 3,691 would be in other parts of the borough.
- 1.5.18 There are no forecasts of future development of tourist accommodation but over the life of the Local Plan some development that could include new hotels, caravans or other accommodation is anticipated. Therefore a contribution from each individual accommodation unit created, proportionate to the impact that could arise from each additional new home, is considered appropriate.
- 1.5.19 The proposed tariff is:
- Residential development within the 6km buffer zone
£337 for each net additional dwelling/ unit

 - Residential development beyond the 6km buffer zone

£151 for each net additional dwelling/ unit

- Tourist accommodation within the 6km buffer zone, e.g. caravan parks and hotels
£153 for each net additional unit of accommodation
- Tourist accommodation beyond the 6km buffer zone, e.g. caravan parks and hotels
£69 for each net additional unit of accommodation

1.5.20 Monitoring and updating the Supplementary Planning Document

1.5.21 Actual housing delivery will inevitably vary to some extent from the projections set out in the Local Plan. The Authority will monitor coastal mitigation contributions and review the level of contributions regularly to ensure that they remain fairly and reasonably related in scale to the developments from which they arise.

1.5.22 A key aim of the Warden Service would be to monitor the amount and condition of the European Sites and the level of disturbance they experience. Monitoring data will be reported annually in the Authority Monitoring Report. Wardens will also regularly report to a Steering Group attended by Officers from both North Tyneside Council and Northumberland County Council and by relevant stakeholders including Natural England.

1.5.23 The above calculations are based on current costs. It is proposed to update the SPD on an annual basis following adoption, to adjust the tariff in line with inflation.

1.5.24 Requirements for applicants

1.5.25 Contributions set out in the Coastal Mitigation SPD are not mandatory. Applicants who do contribute will:

- not be required to submit any additional evidence to demonstrate that their proposals will not lead to adverse effects upon European Sites as a result of recreational disturbance; and,
- benefit from greater certainty that their proposal is in accordance with policy DM5.6 *Management of International Sites*.

1.5.26 If an applicant seeks to provide individual measures to avoid and mitigate for recreational pressure they will have less certainty and face potential delays in the consideration of the planning application and they must:

- provide additional evidence to demonstrate to the satisfaction of the Authority and Natural England that the proposed development would have no adverse impact upon European Site, either alone or in-combination; and
- provide necessary mitigation, alternatives, imperative reasons of overriding public interest or compensation to the enable the Authority in consultation with Natural England to conclude that adverse effects on European Site integrity have been prevented.

1.5.27 Contributions set out in the Coastal Mitigation SPD relate to the mitigation of adverse effects upon European Sites only. Applicants must still submit necessary evidence and if required, measures to avoid or mitigate impacts upon other species or habitats that their proposals would affect.

1.5.28 Public engagement

1.5.29 In accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012, draft SPDs must be consulted upon for a period of at least 4 weeks. The draft SPD was approved through the delegated authority afforded to the Head of Environment, Housing and Leisure on the 1 May 2019. The preparation of the draft SPD included engagement with the Deputy Mayor, Legal and Democratic Services and with the advice and guidance of Natural England. The Draft SPD was subject to consultation undertaken between 17 May and 1 July 2019 with a total of 9 responses received.

1.5.30 Details of the consultation approach, of each representation made and the action taken or response to the comments are outlined at Appendix 1 of this Report. This includes detailing those changes made between the draft SPD and proposed SPD for adoption.

1.5.31 The next steps

1.5.32 Following Cabinet approval for adoption of the SPD included at Appendix 2 the document will be placed on the Authority's website and referenced in the future consideration of planning applications. Contributions will be sought on relevant planning applications immediately following the adoption of the SPD. Collected funds will enable the inception and delivery of the Coastal Mitigation Service and the delivery of physical projects at the coast to enable the recreation impacts of development to be mitigated.

1.5.33 The process for creation and future governance of the Coastal Mitigation Service and the delivery of physical projects will be a matter for the Authority to progress in accordance with its established processes. As the proposed SPD will secure s106 planning obligations the contributions sought and delivery of projects associated with the funding will be governed in accordance with the s106 Planning Obligations protocol established following Cabinet's decision of 14 May 2018.

1.6 **Decision options:**

The following decision options are available for consideration by Cabinet:

Option 1

Agree with the recommendations as set out at paragraph 1.2 of this report.

Option 2

Do not agree the recommendations as set out at paragraph 1.2 of this report.

Option 1 is the recommended option.

1.7 **Reasons for recommended option:**

Option 1 is recommended for the following reasons:

- The adoption of a SPD will allow for the authority to fulfil the requirements of international and national legislation, and local and national planning policy, ensuring that adverse effects upon European Sites are avoided.
- A failure to introduce the strategy risks the Authority being unable to demonstrate that the impacts of development on European Sites are mitigated. This would potentially render the approval of development in the Borough through the grant of planning permission unlawful.

1.8 Appendices:

Appendix 1: Draft Coastal Mitigation Supplementary Planning Document Summary of Engagement, March 2019

Appendix 2: Coastal Mitigation Supplementary Planning Documents, July 2019

1.9 Contact officers:

Martin Craddock, Team Leader Planning Policy (0191) 643 6329

Jackie Palmer, Planning Manager (0191) 643 6336

Jackie Hunter, Biodiversity Officer (0191) 643 7279

Colin MacDonald, Senior Manager, Technical & Regulatory Services (0191) 643 6620

Cathy Davison, Principal Accountant, Investment (Capital) and Revenue (0191) 643 5727

1.10 Background information:

The following background information has been used in the compilation of this report and is available at the office of the author:

1. [Town and Country Planning Act 1990](#)
2. [Planning and Compulsory Purchase Act 2004](#)
3. [Planning Act 2008](#)
4. [Town & Country Planning \(Local Planning\)\(England\) Regulations 2012](#)
5. [National Planning Policy Framework \(2019\)](#)
6. [Conservation of Habitats and Species Regulations 2017](#)
7. [European Directive 92/43/EEC](#)
8. [Statement of Community Involvement 2013](#)
9. [North Tyneside Local Plan \(2017\)](#)
10. [Habitat Regulations Assessment and Appropriate Assessment 2017](#)

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The staff, printing and other costs to publish the Coastal Mitigation SPD will be met from within the existing Authority budgets.

Funding for the projects and warden service identified as mitigation through the Coastal Mitigation SPD will be secured through developer contributions in accordance with Section 106 of the Town and Country Planning Act 1990 as planning obligations agreed as part of a wider agreement with the Authority or as a unilateral undertaking where no other planning obligations would be required. This process will be managed through the developer contributions governance arrangements agreed by Cabinet at its meeting of 14 May 2018.

2.2 Legal

The Coastal Mitigation SPD is an issue to be considered during the planning process.

In accordance with the Local Government Act 2000 and Regulations made under that Act, responsibility for adoption of the SPD following consultation is the responsibility of Cabinet.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

Internal consultation was undertaken throughout late 2018 and 2019. The matter has been subject to engagement with the Deputy Mayor, Cabinet Member for Finance, the Chief Finance Officer and the Head of Law and Governance. The SPD has been prepared in consultation with the Authority's Biodiversity Officer.

2.3.2 External Consultation/Engagement

SPDs must be subject to statutory consultation. A six week consultation on the Draft SPD was held between May 17 2019 and 1 July 2019. The Draft SPD was made available on the Authority's consultation portal. Statutory consultees (Natural England, the Environment Agency and Historic England) and other relevant non-statutory consultees including landowners, developers and other stakeholders were directly consulted.

The consultation methods will comply with both the statutory consultation requirements and the requirements of the Authority's adopted Statement of Community Involvement. Further details of this process and the feedback received will be included within the Summary of Engagement provided at Appendix 1 of this Report.

2.4 Human rights

There are no human rights implications directly arising from this report.

2.5 Equalities and diversity

There are no direct implications arising from this report.

2.6 Risk management

The Cabinet Member has been involved in dialogue relating to Draft SPD and is aware of the risks identified. The risks associated with the proposed SPD have previously been assessed.

2.7 Crime and disorder

There are no direct implications arising from this report.

2.8 Environment and sustainability

The SPD enables the protection of the natural environment.

A Strategic Environmental Assessment Screening Report draft concludes that the impact of the Draft SPD, through responses to the SEA Directive Criteria, would not result in any significant environmental effects beyond those already assessed as part of the preparation of the Local Plan. A full Strategic Environmental Assessment is therefore not required.

PART 3 - SIGN OFF

- Chief Executive X
- Head(s) of Service X
- Mayor/Cabinet Member(s) X
- Chief Finance Officer X
- Monitoring Officer X
- Head of Corporate Strategy and Customer Service X