

STRATEGIC PLANNING AND INFRASTRUCTURE COMMITTEE

9 March 2021

Practice & Procedure Protocol: Duty to Cooperate

Final Decision-Maker	Strategic Planning and Infrastructure Committee
Lead Head of Service	Rob Jarman
Lead Officer and Report Author	Helen Garnett
Classification	Public
Wards affected	All

Executive Summary

This report provides an update to the duty to co-operate procedures which reflect the changes to the proposed protocol as endorsed by members at the meeting of the 12 January 2021. It outlines the protocol to be established in order that the council can meet the relevant national requirements in respect to duty to cooperate.

Purpose of Report

To inform members of and to seek agreement on the proposed framework.

This report makes the following recommendations to this Committee:

1. That members agree the framework for future duty to cooperate processes, and summarised in paragraph 2.16 of this report with further detail outlined in the following paragraphs: meeting levels as detailed in paragraphs 2.7-2.10; the sign off procedure for minutes as detailed in paragraphs 2.11-2.12; and the sign off procedures for statements of common ground as detailed in paragraph 2.13-2.15.

Timetable

Meeting	Date
Strategic Planning and Infrastructure Committee	9 March 2021

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1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>Accepting the recommendations will materially improve the Council's ability to achieve each of the corporate priorities.</p>	Rob Jarman
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report recommendations support the achievements of the four cross cutting objectives by ensuring that the Local Plan Review is successful at examination.</p>	Rob Jarman
Risk Management	<p>The recommendations seek to reduce the risk associated with the production requirements for the Local Plan Review.</p>	Rob Jarman
Financial	<p>Funding has been set aside for the Local Plan Review in the Medium Term Financial Strategy. This includes funding for the specific work described in this report.</p>	Section 151 Officer & Finance Team
Staffing	<p>We will deliver the recommendations with our current staffing.</p>	Rob Jarman
Legal	<p>Accepting the recommendations will fulfil the Council's duties under Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations</p>	Cheryl Parks and Russell Fitzpatrick (Mid Kent

	(2012). Officers from Mid Kent Legal Services have been involved in discussions that have underpinned the formulation of the framework for DtC proposed in this report.	Legal Services (Planning)
Privacy and Data Protection	Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with our retention schedules.	Policy and Information Team
Equalities	The recommendations do not propose a change in service therefore will not require an equalities impact assessment	Senior Policy and Engagement Officer
Public Health	No implications identified	[Public Health Officer]
Crime and Disorder	The recommendation will not have a negative impact on Crime and Disorder.	Rob Jarman
Procurement	N/A	[Rob Jarman & Section 151 Officer]

2. INTRODUCTION AND BACKGROUND

- 2.1 At the SPI committee on the 12 January 2021, a report was brought before members which outlined the council's obligation to cooperate with neighbouring boroughs and other prescribed bodies, as required by the Planning and Compulsory Purchase Act 2004; the Town and Country Planning (Local Planning) (England) Regulations (2012); and the NPPF.
- 2.2 That report set out a proposed process for duty to cooperate engagement going forward, and sought to establish a framework for internal procedures which will ensure that duty to cooperate activities were undertaken in a robust and accountable way. The report sought committee approval for meeting procedures, the recording of engagement with prescribed bodies, and the signing off of statements of common ground.
- 2.3 At that committee, it was agreed that that the protocol should be amended to include the following:
- a greater degree of involvement of members at officer level meetings through these being undertaken in consultation with the Chair and Vice-Chair;
 - the precise nature of member involvement at level 3 meetings;
 - the procedure to sign off urgent changes to an agreed statement of common ground and;
 - the publication of meeting records on the Council's website.
- 2.4 It was also agreed that the procedure be brought back to the committee for final ratification.

2.5 Additionally, this report seeks to update the procedure to include provision for the handling of statements of common ground where these might be brought forward for signing by neighbouring authorities outside of our own timetable.

Duty to Cooperate Procedures.

2.6 This section sets out the proposed procedures, as amended by the committee of the 12 January 2021:

Duty to cooperate with neighbouring authorities

- 2.7 Planned DtC activity with neighbouring authorities will follow a tiered approach in order that strategic matters can be considered in further detail, and any issues may be escalated where required. Escalation is as follows:
- Level 1: Officer level to discuss strategic matters in more detail and consider a broad range of issues. These have been ongoing since inception of the plan. Going forward, these meetings will take place in consultation with the Chair and Vice-Chair of this committee.
 - Level 2: More complex issues and matters of agreement will be discussed at senior officer level. This may involve relevant directors and/or Chief Executive, and will take place in consultation with the Chair and Vice-Chair of this committee.
 - Level 3: Any unresolved issues and key matters of agreement and disagreement will be escalated to member level meetings. Member level meetings may involve some or all of the Chair and Vice-Chair of SPI and Policy and Recourses Committee.
- 2.8 Once key matters of agreement or disagreement are identified by officers, these will be set out in a draft statement of common ground. These draft statements of common ground will form the basis for duty-to-cooperate meeting agendas going forward.

Duty to cooperate with other prescribed bodies

- 2.9 Other prescribed bodies include such organisations as infrastructure providers and regulatory bodies. Meetings with these bodies are currently taking place at officer level (level 1), and for the majority of organisations it is expected that they will continue to be undertaken at this level to their conclusion. Where there may be a particularly complex set of issues to deal with in relation to prescribed bodies, there may be a need for meetings to be escalated to senior officer level (level 2).
- 2.10 Where particular issues arise that need formal agreement, or where disagreement remains then Maidstone will enter into a statement of common ground with that organisation.

Recording and reporting future meetings

- 2.11 Meeting agendas will be set by the contents of the draft statements of common ground and these as informed by previous discussions and meetings.
- 2.12 As agreed at the SPI committee of the 12 January 2021, a broad outline of these discussions will be provided on the council's website. As these discussions are often at an early stage, it is considered that the release of information will constitute a basic record limited to the topics that were discussed at the meeting.

Statements of Common Ground

- 2.13 Statements of common ground may result from either discussions with neighbouring authorities (or potentially with other bodies). In the case of other local authorities, these discussions may emanate from either Maidstone's planning documents, or those of the other authorities. These will culminate in the signing of the statement of common ground. Draft statements of common ground have already been prepared in respect of neighbouring authorities and these will be updated as discussions progress. Whilst the statements reflect matters that have already been discussed with the chair and vice chair through the meeting protocol, these statements will be brought before committee at the appropriate time in order that their content can be agreed.
- 2.14 To accommodate any urgent changes to statements of common ground that may arise after this committee has agreed a statement, any such changes made subsequent to SPI committee agreement will be done in consultation with the Chair and Vice-Chair of the SPI committee.
- 2.15 There may be cases where neighbouring authorities bring forward their Local Plan in advance of Maidstone, and in these instances a statement of common ground will need to be signed earlier than programmed. This has recently occurred with Tunbridge Wells Borough Council are preparing to consult on its Regulation 19 plan. As with standard MBC led procedures, these will be brought before the committee for formal agreement. It should be noted that as these statements are iterative documents, they will continue to develop and will be agreed and signed again when MBC reaches Regulation 19 stage of its plan.
- 2.16 In summary, the recommendations agreed at the committee of the 12 January 2021 are set out below:
1. Officer Duty to Co-operate (level 1 & 2) meetings will take place in consultation with the Chair and Vice-Chair of the Committee;
 2. Member meetings (Level 3) would involve some or all of the Chair and Vice-Chair of Policy and Resources Committee and the Strategic Planning and Infrastructure Committee, as required;
 3. Whilst we wish to promote open and constructive conversations, a basic record of the meetings would be published on the Council's website. This will contain the headline topics discussed in the meeting only.

4. Statements of common ground, whether being brought forward by MBC or another council, will be held in draft form and then brought before the Committee when ready for agreement, with any urgent subsequent changes to be in consultation with the Chair and Vice-Chair of the Committee.
 5. Where the timescales of other authorities do not permit this and where there are no major issues, authority to sign off the Statement of Common Ground will be sought from the Head of Planning and Development in consultation with the Chair and Vice Chair of Strategic Planning and Infrastructure Committee and.
 6. A Statement of Common Ground is a record of duty to cooperate at a point in time, and as such it will continue to be reviewed and updated as the plan making processes progress.
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3. AVAILABLE OPTIONS

- 3.1 The Strategic Planning and Infrastructure Committee are asked to agree the framework for future duty to co-operate, the sign-off procedure for future meeting minutes and the arrangements for statements of common ground, as set out in this report.
 - 3.2 Alternatively, Members may choose not to accept the proposed arrangements. This will mean officers will continue with the duty to co-operate process in order to meet national requirements and will do so using the powers set out in Maidstone Borough Council's constitution.
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4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 That members agree the framework for future duty to co-operate, the sign-off procedure for future meeting minutes and the arrangements for statements of common ground, as set out in this report.
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5. RISK

- 5.1 The risk associated with these proposals, including the risks should the Council not act as recommended, have been considered in line with the Council's Risk management Framework.
- 5.2 The Planning Inspector appointed to examine the Local Plan review will consider whether a council has complied with the duty to co-operate as set out in the NPPF and relevant legislation. Should the Inspector consider that the Council has not met this duty then the examination will not proceed to hearings. This will delay the review of the Local Plan.
- 5.3 If agreement is secured on all recommendations, then we are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.