

West Midlands Resource Technical Advisory Body

Statement of Common Ground

Introduction - WMRTAB and the Duty to Co-operate

The Localism Act 2011 introduced a Duty to Co-operate, which is designed to ensure that all the bodies involved in planning work together on strategic matters that are of larger than local significance. The bodies bound by this duty include local planning authorities, county councils, LEPs and the Environment Agency. Evidence of co-operation is required to demonstrate the soundness of Development Plan documents. Such evidence might include joint plans or policies, a memorandum of understanding, or jointly prepared informal strategies.

The West Midlands Resource Technical Advisory Body (WMRTAB) is a group comprising waste planning and management officers of the Waste Planning Authorities (WPAs) in the West Midlands, the Environment Agency, representatives of industry including the waste management industry, and representatives of environmental organisations.

The role of WMRTAB was originally given formal status in the Government's Planning Policy Statement (PPS) 10. Briefly, this role was to advise the Regional Planning Body on technical strategic waste planning issues. Consistent with this role, WMRTAB has pro-actively commissioned technical work and made technical contributions to planning at the strategic level on behalf of constituent organisations.

The Government's current policy on waste planning¹, which sits alongside the National Planning Policy Framework, replaced PPS10 and notes that:

'Waste is a strategic issue which can be addressed effectively through close co-operation between waste planning authorities and other local planning authorities and public bodies to ensure a suitable and sustainable network of waste management facilities is in place.'

It goes on to set out actions that constitute effective cooperation under the Duty to Cooperate:

- *'gathering, evaluating and ensuring consistency of data and information required to prepare Local Plans. This may include joint commissioning of studies or the joint preparation of an evidence base*
- *engaging actively in dialogue, particularly on those types of wastes or waste facilities that will impact most on neighbouring authorities*
- *active engagement, where necessary, with planning authorities wider than just those who are their more immediate neighbours, particularly if dealing with waste streams for which there is a need for few facilities*
- *jointly monitoring waste arisings and capacity.'*

The above matters are all addressed in WMRTAB's agreed Terms of Reference (see Appendix 1).

WMRTAB Objectives and Activities

¹ National Planning Policy for Waste, 2014

WMRTAB meets regularly (at least two times a year), providing an invaluable opportunity for stakeholders to inform and involve each other regarding progress on waste plans and developments relating to waste management in the West Midlands. As such it brings together a wide range of expertise in what is a very specialist area of planning. WMRTAB also monitors waste management and planning trends, focussing on wider than local patterns and setting the context for plan making and monitoring at the local level.

WMRTAB's latest terms of reference, adopted June 2021, includes the following:

'The overarching aim of WMRTAB is to support co-operation between WPAs and others, by providing objective and authoritative technical advice concerning the sustainable management of material resources and strategic waste management data, issues, and development policies and proposals. In particular, WMRTAB will help WPAs meet their requirements under the DtC.'

WPAs are invited to bring to WMRTAB at the appropriate stages in the plan-making process any significant cross-boundary issues, and to give notice of such matters and provide any relevant information in advance of the meeting. In its consideration of such issues, WMRTAB will explore to what extent the plan has analysed the available data to demonstrate that appropriate provision is being made for an amount of waste equivalent to that generated in its area, allowing for known imports and exports; and whether specific sites or areas are identified to make provision for waste management.

WMRTAB has also prepared a series of Joint Monitoring Statements for the wider West Midlands area, and it is intended to continue to prepare similar information on a regular basis.

The activity of WMRTAB currently occurs on an informal basis. It continues because of its perceived value amongst participant stakeholders. If it is to add full value in terms of the Duty to Co-operate, however, WMRTAB's role should be formally recognised by WPAs (and preferably others to whom the Duty to Co-operate applies).

In establishing the need for co-operation, members WMRTAB will follow the protocol prepared by the Chairs of regional Waste Technical Advisory Bodies including WMRTAB as included in Appendix 2.

Signatories

This statement is agreed by the waste planning authorities listed in Appendix 1. A separate document is maintained on the WMRTAB area of the Local Government Association Knowledgehub website² showing details of signatories. The template for this document is included at Appendix 3. In signing this document, each signatory confirms that it endorses the role, and will support the work, of WMRTAB as set out above and in the attached terms of reference.

² <https://khub.net/group/west-midlands-resource-technical-advisory-body>

Appendix 1 - WMRTAB Terms of Reference

West Midlands Resources Technical Advisory Body Terms of Reference

Updated June 2021 (Final)

1.0 Introduction

- 1.1 The West Midlands Resource Technical Advisory Body (WMRTAB) is a group consisting of: Waste Planning Authorities (WPAs), primarily from the former West Midlands Region; representatives from the waste management industry; and other interested parties. Member organisations are listed in Appendix 1.
- 1.2 Under the Planning and Compulsory Purchase Act 2008, WPAs are required to prepare Local Plans which set out how and where waste can be managed in their areas over a 15 year period.
- 1.3 National Planning for Waste states that: *“In preparing Local Plans, waste planning authorities should:work collaboratively in groups with other waste planning authorities, and in two-tier areas with district authorities, through the statutory duty to cooperate, to provide a suitable network of facilities to deliver sustainable waste management;”*
- 1.4 Waste arising in one WPA area will frequently be managed in another. For example, in order to achieve economies of scale, waste management facilities will often have a catchment which extends beyond the boundary of the planning area within which it is situated. Planning to ensure that sufficient capacity is available to meet future requirements for the management of waste therefore constitutes a ‘strategic matter’ and falls under the ‘Duty to Cooperate’ (DtC). The DtC requires local planning authorities to engage ‘constructively, actively and on an ongoing basis’ when addressing strategic waste planning matters in their Waste Local Plans.
- 1.5 The need for cooperation between WPAs and other bodies on waste is reflected in National Planning Policy for Waste and the Waste Management Plan for England 2021 which states:
‘Strategic policy-making authorities should cooperate with each other, and other bodies, when preparing, or supporting the preparation of policies which address strategic matters, including policies contained in local waste plans. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere. Further consideration is to be given as to the optimal way in which strategic cross-boundary issues, such as major infrastructure or strategic sites, can be adequately

planned for, including the scale at which plans are best prepared in areas with significant strategic challenges.'

2.0 Aims

2.1 The overarching aim of WMRTAB is to support co-operation between WPAs and others, by providing objective and authoritative technical advice concerning the sustainable management of material resources and strategic waste management data, issues, and development policies and proposals. In particular, WMRTAB will help WPAs meet their requirements under the DtC.

3.0 Specific areas of activity

3.1 In order to meet the above aims, WMRTAB will:

- Bring together a wide range of expertise in what is a very specialist area of planning through a wide membership including waste planning and management officers of the Waste Planning Authorities (WPAs) in the West Midlands, the Environment Agency, representatives of industry including the waste management industry, and representatives of environmental organisations;
- Identify strategic issues affecting the sustainable management of waste e.g. waste hierarchy, proximity principle and self-sufficiency;
- Undertake and/or commission technical work where there are identified benefits from work being undertaken at larger than local scale;
- Prepare guidance and best practice to be followed by Member WPAs;
- Formally respond, as a body, to the technical evidence base and policy documents of member authorities and other strategic and national consultations³. Responses will be based on any guidance/best practice notes prepared by WMRTAB;
- Notwithstanding the above, provide comments on member WPA compliance with the Duty to Cooperate when its waste planning policy is published for representations;
- Raise awareness of waste management as an integral part of the circular economy/climate change agenda and contribute to the waste/resource management planning agenda on a national level and within the WMRTAB geographic area;
- Raise awareness of the role of WMRTAB generally e.g. by attendance at relevant meetings and events and also through the preparation of articles for relevant publications.

³ This will not fetter the ability of Member authorities to make their own representations as appropriate.

- Where invited, provide WMRTAB representation on groups and at workshops where strategic waste planning matters are discussed e.g. Local Enterprise Partnerships, West Midlands Combined Authority, National Waste TAB Chairs;
- Take part in online discussion/information sharing groups to help build skills and knowledge with the WMRTAB membership;
- Provide and/or commission training and support for Member organisations related to waste planning;

3.2 Member WPAs engaging each other (and other WPAs) on strategic waste management matters may have regard to WMRTAB Duty to Cooperate Guidance.

3.3 To assist with the effective running of the group WMRTAB shall:

- Publish evidence documents, guidance, meeting minutes, agendas etc online for member authorities to access and use at public examination as required;
- Prepare and monitor an annual business plan that identifies specific activities to take place with a 12 month period under the above categories;
- Meet twice a year;
- Contribute to the preparation of meeting agendas to ensure discussion of relevant strategic matters (Minutes will be prepared by a designated minute-taker on a rotating basis);
- Review and update (as necessary) these Terms of Reference on an annual basis.

3.4 Member WPAs will make a financial contribution to the organisation and running of the group. This will include the costs of employing an independent Chair.

4.0 Member agreement

4.1 All organisations listed in Appendix 1 agree to membership of the group on the basis of the terms set out in this document.

Appendix 1 WMRTAB Member Organisations

N.B. This list is subject to change but was correct at 30 June 2021

Waste Planning Authorities:

- Birmingham City Council;
- Coventry City Council;
- Dudley Metropolitan Borough Council;
- Herefordshire Council;
- Sandwell Metropolitan Borough Council;
- Solihull Metropolitan Borough Council;
- Shropshire Council;
- Staffordshire County Council;
- Stoke on Trent City Council;
- Telford & Wrekin Council;
- Warwickshire County Council;
- Walsall Metropolitan Borough Council;
- Wolverhampton City Council; and,
- Worcestershire County Council

Waste Management Industry:

- Biffa and Veolia (nominated by the Environmental Services Association),
- MVV
- Robert Hopkins Ltd and NISP/ International Synergies

Other Interested Parties:

- Waste Disposal Authorities
- Adjoining Waste Planning Authorities
- Environment Agency
- Friends of the Earth on behalf of Sustainability West Midlands
- Representatives from other (R)TAB groups

Appendix 2 - Duty to Cooperate on Waste – Practice Guide for Waste Planning Authorities in England

Living Draft Version 5.1 – 8 July 2021

Introduction

1. The management of waste has no regard to administrative boundaries, with waste arising in one waste planning authority's area frequently being managed in another. Furthermore, in order to secure economies of scale, waste management facilities will often have a catchment which extends beyond the boundary of the planning area within which it is situated. This is recognised in the current⁴ National Planning Policy for Waste that expects waste planning authorities to: *"plan for the disposal of waste and the recovery of mixed municipal waste in line with the proximity principle, recognising that new facilities will need to serve catchment areas large enough to secure the economic viability of the plant;"*. For these reasons the management of waste is a cross boundary strategic matter, the planning for which requires co-operation between waste planning authorities.
2. Local Planning Authorities have a duty to cooperate on "strategic matters" relating to sustainable development or use of land that has or would have a **significant** impact on at least two planning areas.
3. Since the introduction of the Duty to Cooperate there has been a tendency for WPAs to consult other WPAs where cross-boundary movements of waste are recorded with little consideration of the significance prior to consultation taking place.
4. **This note is a guide to waste planning authorities (WPAs) in England on the basic process associated with engaging other WPAs with a view to ensuring compliance with the Duty to Cooperate (DtC).** It is intended that this note will help ensure a consistent approach to this matter across England whilst reducing the burden of consultation in relation to issues which are unlikely to be significant across multiple planning areas. Furthermore, the adoption of consistent 'accepted' practices may help with evidencing compliance of the process of preparing waste planning policy with DtC legislation during its independent examination.
5. This note covers DtC engagement between WPAs (including National Park Authorities) only.
6. The note does not constitute legal advice.

General

⁴ The version of National Planning Policy for Waste referred to in this document was published on 16 October 2014: <https://www.gov.uk/government/publications/national-planning-policy-for-waste>

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7. Engagement between WPAs will take place where it is considered that a strategic level of movements is taking place on an ongoing basis. Engagement will be initiated as part of a WPA's plan making but may also occur when strategic capacity begins operation or is lost.
8. The purpose of engagement is for WPAs to satisfy themselves that it is appropriate to plan on the basis that a certain quantity of a certain type of waste arising in their area, which is deemed to be strategic, may continue to be managed in another WPA area over the plan period.
9. Engagement should ideally result in agreement on ongoing waste movements between WPAs and **this may be achieved by an exchange of letters rather than via a separate Statement of Common Ground** (SCG). The need for a SCG will be agreed between the parties involved but should take into account the National Planning Policy Framework⁵ and Planning Practice Guidance.
10. It should be noted that where agreement cannot be achieved this does not necessarily mean that there will be a failure to comply with the Duty to Cooperate.

Guidelines for strategic waste movements

11. What constitutes a 'Strategic' level of waste movement will vary between WPAs.
12. The levels set out below have been agreed in London, the south east and east of England as **a starting point** for considering whether dialogue is required. **The levels are a guide and not a rule i.e. they are not thresholds**. A WPA may still choose to engage another WPA where waste movements are below these levels although it is less likely that a formal Statement of Common Ground would be appropriate.
 - Non-hazardous waste⁶ – 5,000 tonnes per annum
 - Inert waste⁷ - 10,000t inert per annum
 - *It should be noted that these guideline levels relate to total quantum of movement to an area rather than to a single site. For example, if a WPA exports 6000 tonnes of inert waste to Site X and 6000 tonnes of inert waste to Site Y located in the same area then specific engagement should take place. However, for hazardous waste especially, smaller movements to single sites may occur and so movements may not be strategic.*
 - *The guideline levels relate to waste being exported from one WPA, or one joint waste planning area, to another.*

⁵ NPPF Paragraph 27 states: "In order to demonstrate effective and on-going joint working, strategic policy-making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these."

⁶ Non-hazardous waste is waste without hazardous properties but may decompose to release pollutants.

⁷ Inert waste is waste that does not undergo any significant physical, chemical or biological change.

13. What constitutes a strategic level of **hazardous waste**⁸ movement will vary greatly depending on:
- How much hazardous waste is produced in a WPA area;
 - What type of hazardous waste is produced e.g. the tonnage relating to strategic movements of cement bonded asbestos will be much higher than that relating to waste chemicals; and,
 - The number of facilities capable of managing a certain type of hazardous waste

A guideline value of 100 tonnes for hazardous waste has been agreed in London, the south east and east of England but for some WPAs and for some types of hazardous waste a quantity much greater than 100 tonnes will be considered strategic (see paragraph 15 below for further considerations). In the North West a value of 500tpa has been used.

14. The guideline levels relate to waste being exported from one WPA, or one joint waste planning area, to another.
15. The West Midlands Resource Technical Advisory Board has proposed a protocol for identifying movements of waste which may be considered strategic. This is included on the WMRTAB knowledgehub website⁹ and may be utilised by any WPA.

Data Sources

16. The main sources of waste data are the Waste Data Interrogator (WDI), Hazardous Waste Data Interrogator (HWDI) and Incinerator Returns. These are publicly available on data.gov.uk. It should be noted that from 2019 the Incinerator Returns are included in the WDI but prior to this year the data is separate.
17. The Environment Agency advise that the HWDI represents reasonably accurate data for the hazardous waste stream. However, the HWDI does not include information on which sites receive the waste so, while the two datasets rarely show the same figures, it helpful to include hazardous waste data from the WDI where it is available to try and identify recipient sites.

Notification

18. Initial engagement is usually to agree the data on movements of waste and identify any reasons why similar movements of waste cannot continue in future e.g. due to the closure of a site. It is the responsibility of the recipient authority to raise any such issues with the exporting authority and to request a statement of common ground if required. Ultimately if no response to such notification is received this may be assumed to mean agreement. An example letter is included at Appendix 1.

⁸ Hazardous waste is waste that is dangerous or difficult to treat, keep, store or dispose of and if improperly handled carries a risk of adverse impact to humans, animals and the environment.

⁹ <https://khub.net/group/west-midlands-resource-technical-advisory-body>

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19. Following initial engagement, further discussion will be necessary between WPAs to identify whether there is an issue that requires strategic cooperation. There may also be other locally specific circumstances that are appropriate to trigger discussions under the DtC. Matters to consider are as follows:
- *Is the ongoing waste movement wholly reliant on a single site for management?*
 - *If the quantum of movement is below the guideline levels is it likely to increase in future? E.g. due to other sites closing.*
 - *Are other WPAs (including the host WPA) relying on a particular site for the future management of waste arising in their areas and if so is there a risk that the capacity becomes over committed?*
 - *Is the distance of the ongoing movement (i.e. from point of arisings to point of management) consistent with the proximity principle? If it isn't then it is likely that alternative management options need to be considered.*
20. When contacting the receiving WPA it would be useful to include trend data of the scale of imports for at least the last 3 years but ideally 5 years as this helps identify any anomalous years. *It is recognised that inclusion of trend data may be onerous and discussion with the Environment Agency on how such trend data can more easily be obtained from its databases will be sought.*
21. Where a WPA manages waste from another area and is updating its waste planning policy, it will notify the WPA of the exporting area. This will likely be notification at the initial stages under Regulation 18.
22. Regardless of whether movements exceed the guidelines, all WPAs should notify every other WPA when commencing work on waste planning – this will act as a ‘safety net’ and allows for changes in the guidelines for ‘strategic’ movements. This will likely be notification at the initial stages under Regulation 18. N.B. A database of generic Waste Planning Authority contacts is available via the regional waste technical groups and will be published on the National Waste TAB Chairs Knowledgehub website¹⁰.
23. While SCGs recognise the availability of capacity they cannot allocate specific capacity to meet specific WPA demands. In this sense the principle of ‘first come first served’ does not apply. It is incumbent on all WPAs to monitor, via authority monitoring reports, the availability of capacity to meet ongoing requirements. If it appears that a deficit in capacity is emerging due to over reliance on specific sites then it is incumbent on all affected WPAs to consider alternative arrangements and, ultimately, make updates to policy if required. All SCGs should include an agreement to monitor the provision of capacity and to be updated accordingly.

Appendix 1: Example DtC Letter

Dear

Duty to Co-operate: cross-boundary movements of waste

[The exporting WPA] is currently preparing its [name] Waste Local Plan. Further information can be found here.

The Duty to Cooperate requires planning authorities to seek agreement with other planning authorities where their plans may have an impact on their area. I am writing to you as part of the duty to co-operate, about strategic waste exports from [the exporting WPA] to your area.

What constitutes a 'strategic' level of waste movement will vary between waste planning authorities, however the guideline levels set out below have been agreed in London, south east and east of England as a starting point for considering whether dialogue is required. These levels are for the total quantum of movement to an area rather than to a single site.

- Non-hazardous waste – more than **5,000 tonnes** per annum
- Inert waste - more than **10,000t** inert per annum

What constitutes a strategic level of **hazardous waste** movement varies depending on:

- How much hazardous waste is produced in a WPA area;
- What type of hazardous waste is produced; and,
- The number of facilities capable of managing a certain type of hazardous waste

A guideline value of 100 tonnes for hazardous waste has been agreed in London, the south east and east of England.

I have asked five questions below to initiate duty to co-operate engagement on waste.

Q1: Do you agree with the following waste exports figures?

Exports of HIC and CDE waste

Site Name	Site Type	Type of Waste	2015	2016	2017	2018	2019

Source: Waste Data Interrogator and Incinerator Returns

Exports of hazardous waste

Type of waste	Management route	2015	2016	2017	2018	2019

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Source: Hazardous Waste Data Interrogator and Waste Data Interrogator

Q2: Do you consider recent movements of waste from [the exporting WPA] to your area to be of 'strategic' importance?

Q3: Are you aware of any planning reasons why similar movements of waste cannot continue in the future (for example any planned closure of facilities)?

Q4: The NPPF requires planning authorities to prepare statements of common ground to document and address strategic cross-boundary matters. Do you consider a statement of common ground is necessary with [the exporting WPA] on cross-boundary movements of waste?

Q5: Are there any other matters you wish to raise at this stage?

I would be grateful for a response to the above questions by [date]. If you have any problems responding, please let me know.

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Appendix 3 – Template for Details of Signatories

Birmingham City Council

Name of Signatory

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Position

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Signature

Date.....

Coventry City Council

Name of Signatory

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Position

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Signature

Date.....

Dudley Metropolitan Borough Council

Name of Signatory

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Position

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Signature

Date.....

Herefordshire Council

Name of Signatory

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Position

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Signature
Date.....

Sandwell Metropolitan Borough Council

Name of Signatory
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Position
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Signature
Date.....

Solihull Metropolitan Borough Council

Name of Signatory
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Signature
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Shropshire Council

Name of Signatory
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Signature
Date.....

Staffordshire County Council

Name of Signatory
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Position
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Signature
Date.....

Stoke on Trent City Council

Name of Signatory
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Position
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Signature
Date.....

Telford & Wrekin Council

Name of Signatory
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Position
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Signature
Date.....

Warwickshire County Council

Name of Signatory
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Position
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Signature
Date.....

Walsall Metropolitan Borough Council

Name of Signatory
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Position
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Signature

Date.....

Wolverhampton City Council

Name of Signatory

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Position

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Signature

Date.....

Worcestershire County Council

Name of Signatory

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Position

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Signature

Date.....