RECOMMENDATIONS

That the Cabinet Member:

1. Agrees that the submitted draft South Bank and Waterloo Neighbours neighbourhood plan satisfies all of the applicable statutory requirements and can proceed to formal publication and be submitted for examination under Regulations 16 and 17 of the Neighbourhood Planning (General) Regulations 2012.

2. To note the process for assessment of the submitted draft neighbourhood plan to be undertaken in due course by an appointed examiner and the scope for the Council as local planning authority to make representations to the examiner about any recommended modification of the draft neighbourhood development plan.

3. To delegate authority to officers to notify the Southbank and Waterloo Neighbours neighbourhood forum of the decision and the carrying out of the processes of formal publication and submission to examination, including preparing in consultation with the cabinet member representations on behalf of the council about the submitted version of the draft neighbourhood plan, notifying relevant consultation bodies of receipt of the draft neighbourhood plan and the making of arrangements for the holding of an examination.

BACKGROUND INFORMATION


5. A Neighbourhood Plan is a plan which sets out policies in relation to the development and use of land in the whole, or part of, a Neighbourhood Area. It may contain a range of policies or proposals for land use development that will carry weight in the determination of planning applications. Neighbourhood Development Orders grant planning permission in relation to a particular Neighbourhood Area for development specified in the Order or for a class of
development specified in the Order. Both Neighbourhood Plans and Neighbourhood Development Orders must be in general conformity with the strategic policies in the development plan for the relevant area. In Southwark, for South Bank and Waterloo Neighbours the development plan comprises of the London Plan, Core Strategy and Southwark Plan. The current Southwark Plan is in the process of being updated. It will be replaced by the emerging New Southwark Plan.

**Neighbourhood Plan preparation stages**

6. The Localism Act 2011 introduced the opportunity for local communities to produce Neighbourhood Development Plans (NDPs), Neighbourhood Development Orders and Community Right to Build Orders. NDPs allow communities to shape development and growth in their local areas and form part of the statutory development plan for the local planning authority once ‘made’.

7. The first stage of preparing a NDP is the designation of a neighbourhood forum and a neighbourhood area. Once a neighbourhood forum has been designated by the local planning authority they can prepare a draft NDP for the designated neighbourhood area. The neighbourhood forum must arrange for the draft NDP to undergo consultation for a period of at least 6 weeks. Following this, the neighbourhood forum must submit the draft NDP to the local planning authority, which must make a decision on whether it complies with all of the relevant statutory requirements before the draft plan can progress to formal publication, examination and, potentially, referendum and bringing in to force. This information can be found in our online guidance provided online on the council’s website.

8. A draft South Bank and Waterloo Neighbours Neighbourhood Plan has been formally submitted to the Council by the South Bank and Waterloo Neighbours (SoWN) neighbourhood forum. A decision is required on whether the submitted draft NDP satisfies the relevant statutory requirements such that it should proceed to the next stage: publication and examination.

9. The SoWN neighbourhood area straddles the boundary of Lambeth and Southwark. A decision on whether the draft NSP meets all of the relevant statutory requirements must be made separately by each local planning authority.

**KEY ISSUES FOR CONSIDERATION**

**Proposal and Reasons**

*Overview of the history of production of the draft SoWN NDP*

10. The SoWN neighbourhood forum and neighbourhood area were designated by the Council on 10 February 2014.

11. Local planning authorities are required by paragraph 3 of schedule 4B to the Town and Country Planning Act 1990 (‘the 1990 Act’) to give such advice or assistance to qualifying bodies as, in all the circumstances, they consider appropriate for the purpose of, or in connection with, facilitating the making of proposals for NDPs in their area (as explained further below, although the
legislation as set out in Schedule 4B of the 1990 Act is expressed to apply to
neighbourhood development orders, other legislation applies the provisions of
Schedule 4B to the preparation of neighbourhood development plans). ‘Qualifying bodies’ for these purposes include designated neighbourhood forums.

12. Following the designation of the forum and the neighbourhood area, SoWN
began preparing a draft NDP. Throughout this process officers have provided
SoWN with advice and assistance and have provided comments on draft
versions of the NDP and associated documents. A detailed history of officers’
engagement with SoWN regarding the draft policy that is the focus of this report
is set out in Appendix D.

What happens when a draft NDP is formally submitted to the local planning authority?

13. When a draft NDP is formally submitted to the Council (that is, when a draft
document is submitted that the neighbourhood forum wishes to be taken forward
to the next stage in the process, as opposed to a draft being submitted purely for
advice/feedback from officers) it must make a decision on whether the submitted
draft plan is accompanied by the requisite documentation and meets the relevant
statutory requirements.

14. The requirement for the local planning authority to make a decision at this stage
in the process is contained in paragraph 6 of Schedule 4B to the 1990 Act. The
language of paragraph 6 of Schedule 4B is mandatory. It provides that the local
planning authority ‘must consider’ compliance with various matters, and ‘must
notify’ the body submitting the draft plan of the authority’s decision. Paragraph 8
of Schedule 4B imposes a duty on an examiner who is appointed at a later stage
to conduct an examination of a draft NDP to consider compliance with a range of
matters, some of which overlap with the matters that are required to be
considered by the local planning authority under paragraph 6. At the stage of
formal submission to the local planning authority, however, the authority is
required to consider the issue of compliance with the requirements of paragraph
6 of Schedule 4B.

15. Paragraph 6 provides that:-

1) This paragraph applies if:
   a) a proposal has been made to a local planning authority, and
   b) the authority have not exercised their powers under paragraph 5 to
      decline to consider it.

2) The authority must consider:-
   a) Whether the qualifying body is authorised to act for the purposes of a
draft development order to act in relation to the neighbourhood
development area concerned as a result of section 61F,
   b) Whether the proposal by the body complies with provision made by or
      under that section,
   c) Whether the proposal and the documents and information
      accompanying it (including the draft neighbourhood development order)
      comply with provision made by or under paragraph 1, and
   d) Whether the body has complied with the requirements of regulations
      made under paragraph 4 imposed on it in relation to the proposal.
3) The authority must also consider whether the draft neighbourhood development order complies with the provision made or under sections 38A and 38B of the 2004 Act.

4) The authority must:
   a) notify the qualifying body as to whether or not they are satisfied that the matters mentioned in sub-paragraphs (2) and (3) have been met or complied with, and
   b) in any case where they are not so satisfied, refuse the proposal and notify the body of their reasons for refusing it.

16. The council has considered matters that fall within Paragraph 6(2) of schedule 4B to the 1990 Act. Paragraph 6(2) (a and b) of schedule 4B to the 1990 Act sets out that the authority must consider whether the qualifying body is authorised to act in relation to the neighbourhood area concerned as a result of 61F and that the proposal by the body complies with the provision made under that same section. The SOWN neighbourhood forum meets that criteria in that they have been designated as the qualifying body for the neighbourhood area concerned (as set out in the neighbourhood area boundary appended), and that their proposal for reasons set out in this report, complies with the provision under 61F.

17. The council have also considered under sections c and d of paragraph 6(2), whether the proposals and accompanying information comply with provision in paragraph 1 and whether the body has complied with the requirements of regulations made under paragraph 4 in relation to the proposal. The Council is satisfied that the documents submitted, which have been appended to this report, accord with the provisions made under paragraph 1 and are in compliance with the requirements under paragraph 4 of schedule 4B. Therefore, it is considered that all the considerations under paragraph 6(2) have been satisfied.

Section 38A of the 2004 Act

18. Section 38A(2) of the 2004 Act provides that: ‘A “neighbourhood development plan” is a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan’. In order to satisfy the statutory criteria a draft neighbourhood plan submitted to a local planning authority must therefore set out policies in relation to the development and use of land (see paragraph 6(3) of Schedule 4B). This reflects the fact that NDP policies will, subject to the examination and referendum stages of the process, form part of the statutory development plan for the area of a local planning authority. Applications for planning permission must be determined in accordance with the statutory development plan for an area (unless material planning considerations indicate otherwise).

Other requirements

19. As regards other requirements that the draft NDP is required to meet at this stage, these include the obligation for the neighbourhood forum to have carried out consultation prior to submitting a draft NDP to the local planning authority. The detail of the way in which this consultation needs to be carried out is contained in Regulation 14 of the 2012 Regulations.
20. A full list of the various requirements to be complied with is contained in the left hand columns of the table of Appendix E.

21. It should be noted that as part of the neighbourhood planning process, the draft NDPs which go forward to publication and independent examination, the Examiner is required to consider for themselves whether the draft NDP contains policies relating to the development and use of land, as well as considering other matters about the content of the draft plan. The Council would then need to decide at that stage what action to take in the light of the Examiner’s recommendations. An Examiner could recommend, for example, that the draft plan does not proceed to a referendum, or should be modified so as to remove certain parts of the content. The local planning authority would then have to make a decision whether the draft should proceed to the referendum stage in light of the Examiner’s recommendations.

Financial implications

22. There are no revenue implications due to the implementation of the recommendations of this report.

23. Staffing and any other costs connected with these recommendations will be contained within existing departmental revenue budgets.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

24. The recommendation requests that the cabinet member for growth, development and planning agrees with officers that the submitted draft SoWN NDP satisfies all of the applicable statutory requirements and should therefore be published under Regulation 16 and proceed to examination under Regulation 17 of the 2012 Regulations.

25. It is further recommended that the cabinet member delegates to officers the authority to notify SoWN of the council’s decision to proceed to publication and thereafter to make such arrangements as are necessary in the carrying out of the publication and submission to independent examination. The cabinet member is also asked to note that in due course the submitted draft NDP is subject to independent examination by an appointed examiner during which stage the Council will be able to make representations.

26. Section 116 of the Localism Act 2011 (which amended the 1990 Act), the 2004 Act and the 2012 Regulations introduced provisions for neighbourhood planning and placed a statutory duty on local planning authorities to assist in the plan making process. This legislation sets out what is required of a NDP and the matters which a council should consider when a NDP is submitted for publication.

27. It is clear from the analysis provided by officers at Appendix E to this report that they have had proper regard to the legislative requirements in recommending that the NDP can move forward to publication in accordance with Regulation 16 of the 2012 Regulations.

28. Following the Regulation 16 publication the council must appoint an independent examiner in accordance with paragraph 7 of Schedule 4B of the 1990 Act. The
Council has a statutory duty to make the necessary arrangements to hold the examination and SoWN must consent to the appointment of the examiner.

29. The examiner is required to consider whether the NDP meets the requirements in paragraph 8 of Schedule 4B of the 1990 Act. Following the examination, the examiner will produce a report recommending whether the NDP should go to a referendum (with or without modifications) or that the proposal for the NDP is refused.

30. The council will be required to consider the examiner’s recommendations and if it is decided a NDP (with or without modifications) meets the statutory requirements the Council must arrange for a referendum to take place. It should be noted that the majority of the area covered by this NDP is situated in the London Borough of Lambeth, who act as lead authority. Therefore, both councils will need to consider the examiner’s recommendations together before deciding whether the NDP should go to a referendum. Both councils will also need to work closely together in making arrangements for a referendum and will need to appoint a joint chief counting officer as per Regulation 10 of the Neighbourhood Planning (Referendums) Regulations 2012.

31. If made, the NDP will form part of the council’s development plan and sit alongside the Local Plan and the London Plan. A neighbourhood plan attains the same legal status as the Local Plan once it has been approved at a referendum. At this point it comes into force as part of the statutory development plan. This is unless the Council decides that the making of the plan would breach, or would otherwise be incompatible with any EU obligation or any of the Convention rights. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

32. The Equality Act 2010 introduced the public sector equality duty, which merged existing race, sex and disability equality duties and extended them to include other protected characteristics; namely age, gender reassignment, pregnancy and maternity, religion and belief and sex and sexual orientation, including marriage and civil partnership. In summary those subject to the equality duty, which includes the Council, must in the exercise of their functions: (i) have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; and (ii) foster good relations between people who share a protected characteristic and those who do not.

33. In addition, the Human Rights Act 1998 imposed a duty on the council as a public authority to apply the European Convention on Human Rights; as a result the Council must not act in a way which is incompatible with these rights. The most important rights for planning purposes are Article 8 (respect for homes); Article 6 (natural justice) and Article 1 of the First Protocol (peaceful enjoyment of property).

34. Officers are advised that an equalities impact assessment will need to be undertaken of the draft NDP. This will need to consider whether the plan has any adverse effects on people who share protected characteristics. This conclusion should be reviewed again following the publication period, as the plan moves forward to the examination stage.

35. Paragraph 7 (Part 3 (D)) of the Southwark Constitution 2012/13 provides that it is the role and function of the cabinet member to agree to significant policy issues in relation to their area of responsibility. Paragraph 17 of this part delegates to
the cabinet member for regeneration and new homes (new title since 2018 elections is cabinet member for growth, development and planning) responsibility for agreeing broad consultation arrangements, in relation to their areas of responsibility.

36. Further, decision 5 of (Table A), paragraph 17, of the “Neighbourhood Planning – Council Decision Making Report” clearly states that the decision to publish a NDP and whether it complies with legislation can be taken at Individual Cabinet Member Decision level. It is therefore considered that the recommendations sought in this report fall within the cabinet member’s decision-making remit.

Strategic Director of Finance and Governance (PW18/006)

37. The strategic director of finance and governance notes the recommendations made in this report.

38. The strategic director of finance and governance notes that there are no revenue implications due to the implementation of the recommendations of this report.

39. Staffing and any other costs connected with these recommendations will be contained within existing departmental revenue budgets.

Consultation and co-production

40. If a decision is made to publish the NDP the council will need to publish on its website and in such other manner as is likely to bring the NDP to the attention of people who live and work in the neighbourhood area, the following:

- a) details of the plan proposal;
- b) details of where and when the plan proposal may be inspected;
- c) details of how to make representations;
- d) a statement that any representations may include a request to be notified of the local planning authority’s decision under regulation 19 in relation to the neighbourhood development plan; and
- e) the date by which those representations must be received, being not less than 6 weeks from the date on which the plan proposal is first publicised.

41. Lambeth Council are the lead council for this NDP. SoWN has been made aware of Southwark and Lambeth Council officer’s reservations about specific parts of the draft NDP over the last two years as set out in Appendix D. Officers have given SoWN an opportunity to revise the draft policy into a format that they would consider could enable the draft NDP be taken forward to the next stage of the process.

42. Southwark have also worked with officers from Lambeth at various stages of the preparation by SoWN of the draft NDP.

Risk management

43. The decision that the cabinet member is being asked to make is a decision that the legislation requires the Council to make.

44. If the cabinet member proceeds to make the decision as recommended by officers, a clear record of the reasons for arriving at that decision should be made.
45. If the cabinet member were not to accept officers’ recommendations, there is a risk of legal challenge to that decision by SoWN. The risks associated with legal proceedings, and in particular any risk to the council in terms of the costs of those proceedings, would need to be evaluated in the normal way in the event that a challenge were to be made.

Equalities impact assessment

46. Southwark Council will carry out an equalities assessment of the plan to consider whether the public sector equalities duty requirements have been met.

BACKGROUND DOCUMENTS

<table>
<thead>
<tr>
<th>Background Papers</th>
<th>Held At</th>
<th>Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Localism Act</td>
<td><a href="http://www.legislation.gov.uk/ukpga/2011/20/content/enacted">http://www.legislation.gov.uk/ukpga/2011/20/content/enacted</a></td>
<td><a href="mailto:planningpolicy@southwark.gov.uk">planningpolicy@southwark.gov.uk</a></td>
</tr>
</tbody>
</table>

APPENDICES

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Draft of South Bank and Waterloo Neighbourhood Plan</td>
</tr>
<tr>
<td>B</td>
<td>SoWN Consultation Report</td>
</tr>
<tr>
<td>C</td>
<td>SoWN Basic Conditions Statement</td>
</tr>
<tr>
<td>D</td>
<td>SoWN SEA Screening Report</td>
</tr>
<tr>
<td>E</td>
<td>Overview of the history of production of the draft SoWN NDP</td>
</tr>
<tr>
<td>F</td>
<td>NDP Submission requirements checklist</td>
</tr>
</tbody>
</table>

AUDIT TRAIL

<table>
<thead>
<tr>
<th>Lead Officer</th>
<th>Kevin Fenton, Strategic Director of Place and Wellbeing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report Author</td>
<td>Juliet Seymour, Planning Policy Manager</td>
</tr>
<tr>
<td>Version</td>
<td>Final</td>
</tr>
<tr>
<td>Dated</td>
<td>17 October 2018</td>
</tr>
<tr>
<td>Key Decision?</td>
<td>No</td>
</tr>
</tbody>
</table>

CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER

<table>
<thead>
<tr>
<th>Officer Title</th>
<th>Comments sought</th>
<th>Comments included</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director of Law and Democracy</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Strategic Director of Finance and Governance</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Cabinet Member</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

Date final report sent to Constitutional Support Services 22 October 2018