

## CABINET MEETING – 12 MARCH 2014

### EXECUTIVE SUMMARY SHEET – PART I

**Title of Report:**

The Duty to Co-operate – Agreement of the Memorandum of Understanding Between the North East Local Planning Authorities

**Author(s):**

Deputy Chief Executive

**Purpose of Report:**

The purpose of this report is to advise Cabinet of the new statutory requirement introduced by the Localism Act 2011 on all local planning bodies in respect of a Duty to Co-operate when preparing their Local Plans and to seek approval to a new Memorandum of Understanding (MOU) between the eight North East local planning authorities which sets out the formal mechanisms in order to comply with the Duty.

**Description of Decision:**

It is recommended that Cabinet approves the Memorandum of Understanding (MOU) between the eight North East Local Planning Authorities in respect of the duty to co-operate and authorises the Leader of the Council and the Chief Executive to sign the MOU on behalf of the Council.

**Is the decision consistent with the Budget/Policy Framework?**

**\*Yes/No**

**If not, Council approval is required to change the Budget/Policy Framework**

**Suggested reason(s) for Decision:**

To comply with the Duty to Co-operate

**Alternative options to be considered and recommended to be rejected:**

There are no alternative options. The Council has a statutory duty to comply with the duty to co-operate in respect of preparation of its new development plan documents. Developing a MOU is strongly advocated by the Planning Inspectorate as being an important tool in demonstrating compliance with the duty at the Local Plan Examination.

**Impacts analysed:**

Equality

Privacy

Sustainability

Crime and Disorder

**Is this a “Key Decision” as defined in the Constitution?**

**Yes/No**

**Is it included in the 28 day Notice of Decisions?**

**Yes/No**

**Scrutiny Committee**



**THE DUTY TO CO-OPERATE – AGREEMENT OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE NORTH EAST LOCAL PLANNING AUTHORITIES**

**REPORT OF THE DEPUTY CHIEF EXECUTIVE**

**1.0 PURPOSE OF THE REPORT**

- 1.1 The purpose of this report is to advise Cabinet of the new statutory requirement introduced by the Localism Act 2011 on all local planning bodies in respect of a Duty to Co-operate when preparing their Local Plans and to seek approval to a new Memorandum of Understanding (MOU) between the eight North East local planning authorities which sets out the formal mechanisms in order to comply with the Duty.

**2.0 DESCRIPTION OF DECISION**

- 2.1 It is recommended that Cabinet approves the Memorandum of Understanding (MOU) between the eight North East Local Planning Authorities in respect of the duty to co-operate and authorises the Leader of the Council and the Chief Executive to sign the MOU on behalf of the Council.

**3.0 BACKGROUND**

- 3.1 The Localism Act 2011 introduced a new “duty to cooperate” on all local planning authorities and other public bodies when preparing their local development plans. This is now included as a new Section 33A to the Planning and Compulsory Purchase Act 2004 (as amended).
- 3.2 Following the revocation of the Regional Spatial Strategy for the North East, the new duty is now the primary legal requirement in terms of dealing with strategic planning matters that cross administrative boundaries. Co-operation is required on new and emerging local development plan issues (such as housing, economic development and transport infrastructure) where those issues are considered to be both strategic and would have a significant impact.
- 3.3 The duty applies to all local planning authorities in England and to a number of other public bodies including the Marine Management Organisation, Environment Agency, Historic Buildings and Monuments Commission for England, Natural England, Homes and Communities Agency, Highways Agency, Integrated Transport Authorities and Highway Authorities.
- 3.4 In short, the duty relates to the preparation of local development plan documents and requires:-

- Councils and public bodies to engage constructively, actively and on an ongoing to address matters of development that may have a significant impact on at least two local planning areas;
- Joint working on strategic cross boundary issues;
- Consideration given to meeting the development needs of an adjacent Council who cannot wholly meet its own needs;

3.5 Crucially, the Duty does not impose a duty for all parties to “agree” when preparing their individual plans. Rather, it is an iterative process which must demonstrate that each local authority has worked together to seek to explore and address all strategic cross boundary implications which arise from their new and emerging development plans. Furthermore, when a local authority submits its new development plan document to the Secretary of State for independent examination, it must be able to demonstrate that it has complied with the duty to co-operate in respect of the preparation of the plan. Therefore, compliance with the duty is a ‘showstopper’ in plan making terms. Several authorities have recently had to suspend or withdraw their plans from the Examination stage as a consequence of non-compliance.

#### **4.0 MEETING THE REQUIREMENTS OF THE DUTY IN SUNDERLAND**

##### **4.1 The North East Memorandum of Understanding**

4.2 In order to ensure compliance with the duty to co-operate, a Memorandum of Understanding (MOU) has been prepared between Durham County Council, Gateshead Council, Newcastle City Council, North Tyneside Council, Northumberland County Council, Northumberland National Park, South Tyneside Council and Sunderland City Council.

4.3 The MOU sets out the appropriate governance structures and framework for decision making and provide the conduit for cooperation and consideration of strategic planning issues. Whilst the MOU is not a legally binding document, it sets out the agreed processes, links and roles of existing groups and structures and how strategic and cross-boundary matters in respect of emerging local development plans could be raised and resolved through an agreed governance structure.

#### **5.0 ESTABLISHED CROSS-BOUNDARY WORKING**

5.1 There has been a strong track record of co-operation between this Council and its neighbouring authorities on both strategic planning policy issues and establishing consistent methodologies to develop evidence to inform their respective development plans.

5.2 Cross-boundary meetings on common development plan issues have long been held at officer level on an informal basis with our neighbouring authorities. Under the duty to co-operate, these working relationships will become more formalised to provide clear evidence of co-operation as our respective development plans are advanced.

## **6.0 ALTERNATIVE OPTIONS**

- 6.1 There are no alternative options. The Council has a statutory duty to comply with the duty to co-operate in respect of preparation of its new development plan documents. Developing a MOU is strongly advocated by the Planning Inspectorate as being an important tool in demonstrating compliance with the duty at the Local Plan Examination.

## **7.0 RELEVANT CONSIDERATIONS AND CONSULTATIONS**

### **7.1 Financial Implications**

- 7.2 There are no direct costs associated with adopting the MOU as the appropriate mechanism for considering cross-boundary issues in order to comply with the Duty to Co-operate.

### **7.3 Legal Implications**

- 7.4 The Council now has a statutory duty to co-operate with neighbouring local planning authorities and other public sector bodies in respect of the preparation of the new development plan documents by virtue of Section 33A of the 2004 Act. Further, at the examination stage for a new development plan document, the local planning authority must be able to demonstrate to the Secretary of State how it has complied with the duty to co-operate in preparing the local plan.
- 7.5 The MOU establishes an agreed framework between the seven North East Local Planning Authorities for the identification and discussion of strategic and cross-border strategic planning issues as part of the preparation of each authority's emerging new local development plans. This will assist in the Council discharging its obligation under Section 33A of the 2004 Act in respect of the new emerging development plan.

### **7.6 Human Rights**

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

### **7.8 Equalities and Diversity**

- 7.9 there are no Equalities and Diversity issues directly arising from this report.

### **7.10 Environment and Sustainability**

- 7.11 The Memorandum of Understanding has no direct implications, but all matters contained within the City's emerging Local Plan must by law promote sustainable development and be subject of a separate Sustainability Appraisal / Strategic Environmental Assessment and Habitat Regulations Assessment.

## **APPENDIX 1**

### **MEMORANDUM OF UNDERSTANDING**

#### **Duty to Co-operate**

#### **Durham, Gateshead, Newcastle, North Tyneside, Northumberland, South Tyneside and Sunderland Councils and Northumberland National Park**

### **1. Introduction**

- 1.1 This Memorandum of Understanding is the agreement between Durham County Council, Gateshead Council, Newcastle City Council, North Tyneside Council, Northumberland County Council, Northumberland National Park, South Tyneside Council and Sunderland City Council (“the Partners”) to comply with the duty to co-operate on planning issues set out in Section 33A of the Planning and Compulsory Purchase Act 2004 (the Act) as well as those that relate to Strategic Priorities as set out in the National Planning Policy Framework.
- 1.2 Section 33A of the Act introduces a new ‘duty to co-operate’. This applies to all local planning authorities in England and to a number of other public bodies including the Marine Management Organisation, Environment Agency, Historic Buildings & Monuments Commission for England, Natural England, Civil Aviation Authority, Homes & Communities Agency, Clinical Commissioning Groups, Office of the Rail Regulator, Highways Agency, Integrated Transport Authorities and Highway Authorities.
- 1.3 Section 20 of the Act requires that in examining Local Plans the Secretary of State will be assessing whether the Local Planning Authority has complied with the duty to co-operate in preparing the Local Plan.

### **2. The purpose of our co-operation**

- 2.1 The purpose of the Memorandum of Understanding is to set out how the Partners will comply with the duty to co-operate for their mutual benefit and for that of their joint plan making area. It will:
  1. Clarify and record the responsibilities of the Partners both individually and collectively; and
  2. Establish guidelines for joint working going forward in accordance with the governance arrangements set out in the Memorandum of Understanding.

### **3. Status of the Memorandum of Understanding**

- 3.1 The Memorandum of Understanding is an operational document. It is not a formally binding legal agreement and the partnership is not a legal entity.
- 3.2 The Partners individually and collectively agree to use all reasonable endeavours to comply with the terms and spirit of the Memorandum of Understanding.
- 3.3 Under the Memorandum of Understanding the Partners cannot employ staff, let contracts or commit financial resources on behalf of the constituent Partners without their formal agreement.
- 3.4 Agreement to or withdrawal from the Memorandum of Understanding does not remove a Local Authority's duty to co-operate pursuant to the Act.

### **4. Governance Arrangements**

- 4.1. These arrangements are set out on the attached flowcharts ("the Flowcharts"). The arrangements are as follows:
- 4.2. Each local authority will be responsible for preparing and adopting their own Local Plan, development plan documents and local development documents and setting up their own governance arrangements to facilitate this.
- 4.3 Each Local Authority's Local Plan Governance Group will feed progress reports and strategic priority issues that have a cross-boundary interest to the Planning Heads of Service Group for discussion. The Planning Heads of Service Group will include representation from each of the seven local authorities. This will be the mechanism of co-operating on such issues.
- 4.4 The Planning Heads of Service Group will report their discussions and agreed actions back to the Local Plan Governance Groups and as appropriate to any or all of the following:
  - Economic Directors Group
  - LEP Transport Group
  - LEP Planning and Infrastructure Group
  - Chief Executives Group
  - Leaders and Elected Mayors Group
  - North East Local Enterprise Partnership (LEP)
- 4.5 These above groups may also refer issues to the Planning Heads of Service Group for discussion and or action and for feeding back to the Local Plan Governance Groups.
- 4.6 The Local Plan Governance Group is the relevant board or grouping of senior officers managing the production of the authority's Local Plan.

## **5. Scope of Co-operation**

- 5.1 Each Partner will engage constructively, actively, expediently, and on an on-going basis in any process which involves the following:
- The preparation of Local Plans;
  - The preparation of other local development documents;
  - Activities that can reasonably be considered to prepare the way for activities which any of the above that are or could be contemplated; and
  - Activities that support any of the above so far as they relate to sustainable development or use of land that has or would have a significant impact on at least two planning areas, including sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas.
- 5.2 Engagement for the purposes of 5.1 includes in particular:
- Considering whether to consult on and prepare and enter into and publish agreement on joint approaches to the undertaking of activities in 5.1; and
  - Considering whether to agree to prepare joint local development documents.
- 5.3 When complying with the duty to co-operate the Partners will have regard to guidance given by the Secretary of State.

## **6. Meetings**

- 6.1. The Planning Heads of Service Group will meet bi-monthly or as required.

## **7. Funding and Finance**

- 7.1. Each Authority will use its own staff to progress their Local Plans except where consultants are used.
- 7.2. If consultants are used on a joint basis their costs will be apportioned dependent upon the amount of work that affects each authority's area. The Project Directors responsible for each Local Plan Governance Group or in their absence the Project Owners as specified on the Flowcharts will be responsible for authorising the costs associated with any work prior to that work being commenced.
- 7.3. Each authority will invoice the other authority once every two months for expenditure it has incurred on the others behalf, providing supporting detail of the relevant transactions as appropriate.



## **8. Duration**

- 8.1. The joint governance arrangements will remain in place until the duty to co-operate is no longer required by legislation.

## **9. Dispute Resolution**

- 9.1. In the event of a dispute that cannot be resolved by the Planning Heads of Service Group the matter concerned will be referred to the Chief Executives Group. If the matter cannot be resolved by the Chief Executives Group it will be referred to the Leaders and Elected Mayors Group. If the matter is not able to be satisfactorily resolved the Partners put in writing and keep on file the matter.
- 9.2. Those decisions in respect of agreement and dispute will be clearly logged and submitted as part of the evidence to each respective local planning authority's Local Plan examination to demonstrate how the duty has been complied with.

## **10. Intellectual Property Rights**

- 10.1. Subject to the rights of third parties, the Partners will share equally the intellectual property rights to all data, reports, drawings, specifications, designs, inventions or other material produced or acquired including copyrights in the course of their joint work. The Partners agree that any proposal by one Partner to permit a third party to utilise the documents and materials produced by the partnership shall be subject to the agreement of all other Partners. Any changes, amendments or updates made to the documents and materials, if made under the terms of the Memorandum of Understanding, shall be jointly owned by the Partners.

## **11. Freedom of Information Requests**

- 11.1. If any partner receives a freedom of information request in respect of shared work associated with the Memorandum of Understanding it will be shared at the earliest opportunity with the other relevant authorities in order to determine and achieve a consensus as to what information shall be released.

## **12. Termination**

- 12.1. Any of the Partners may withdraw from the Memorandum of Understanding at any time. Any such withdrawal would need to be approved by the Chief Executives Group and Leaders and Elected Mayors Group.

12.2. If the Memorandum of Understanding is terminated, the Partners agree that any reports, studies or any other information which has been jointly prepared by the Partners can be used by each of the Partners separately.

### 13. Signatories



Leader: \_\_\_\_\_

Chief Executive: \_\_\_\_\_



Leader: \_\_\_\_\_

Chief Executive: \_\_\_\_\_



Leader: \_\_\_\_\_

Chief Executive: \_\_\_\_\_



Elected Mayor: \_\_\_\_\_

Chief Executive: \_\_\_\_\_



Leader: \_\_\_\_\_

Chief Executive: \_\_\_\_\_



Leader: \_\_\_\_\_

Chief Executive: \_\_\_\_\_



South Tyneside Council

\_\_\_\_\_  
Leader: \_\_\_\_\_

\_\_\_\_\_  
Chief Executive: \_\_\_\_\_



\_\_\_\_\_  
Leader: \_\_\_\_\_

\_\_\_\_\_  
Chief Executive: \_\_\_\_\_

## Duty to Co-operate Governance Structure 'Flowchart'

