

# **REPORT TO PORTFOLIO HOLDER FOR PLANNING**

## **REPORT FROM ASSISTANT DIRECTOR, PLANNING AND REGENERATION SERVICES**

### **SUBJECT: SOUTH ESSEX MEMORANDUM OF UNDERSTANDING**

#### **1 DECISION BEING RECOMMENDED**

1.1 It is recommended that:

- a) The South Essex Strategic Planning Memorandum of Understanding 2017 (SEMoU) endorsed and signed by the Managing Director and Leader of Rochford District Council be formally recognised (Appendix 1).
- b) The overall responsibilities for discharging the Officer functions (in respect of strategic planning outlined in the SEMoU) are delegated to the Assistant Director, Planning and Regeneration Services and the Planning Policy Team Leader

#### **2 KEY DECISIONS DOCUMENT REFERENCE No: 01/17**

#### **3 REASON/S FOR RECOMMENDATION**

- 3.1 Section 110 of the Localism Act 2011 places a Duty to Co-operate on Local Planning Authorities (LPAs) and County Councils (alongside some other prescribed organisations). This Duty requires them to engage constructively, actively and on an on-going basis to maximise the effectiveness of plans which cover strategic planning related matters.
- 3.2 The five South Essex LPAs (Basildon Borough, Castle Point Borough, Rochford District, Southend Borough and Thurrock Borough) and Essex County Council have a long history of working together across the strategic planning geography. However, given the legal implications of the Duty and how this has been tested and scrutinised elsewhere in the country through the plan-making process, the five South Essex LPAs and Essex County Council have sought to review and consider how we can, collectively, demonstrate effective compliance with the Duty to Co-operate.
- 3.3 A South Essex Strategic Planning Memorandum of Understanding (SEMoU) has been prepared that sets out – at a high level – how the five South Essex LPAs and Essex County Council will comply with the Duty to Co-operate for their mutual plan-making and legal compliance benefit. This report therefore recommends that the SEMoU is endorsed and signed by the Managing Director and Leader of the Council, with certain operational strategic planning functions delegated to specific officers, working with the Portfolio Holder for Planning.

## 4 BACKGROUND

### Duty to Co-operate and Plan-Making

- 4.1 Across South Essex there is a long history of LPAs working together across the strategic planning geography. However, a new section 33A was inserted into the Planning and Compulsory Purchase Act 2004 by the enactment of section 110 of the Localism Act 2011, which places a legal Duty to Co-operate on Local Planning Authorities (LPAs) and County Councils (alongside some other prescribed organisations). This Duty requires such organisations to engage constructively, actively and on an on-going basis to maximise the effectiveness of plans, which cover strategic planning related matters. The Duty to Co-operate is not a duty to agree. However, LPAs and County Councils are still required to make every effort to secure the necessary co-operation on strategic cross boundary matters – and evidence this – to ensure they can demonstrate that their Local Plans are effective before the Plan is submitted to the Government for independent public examination.
- 4.2 The National Planning Policy Framework (NPPF)<sup>1</sup>, at paragraph 156, defines the strategic priorities for plan-making as:
- the homes and jobs needed in the area;
  - the provision of retail, leisure and other commercial development;
  - the provision of infrastructure for transport, telecommunications, waste management, water supply, waste water, flood risk and coastal change management, and the provision of minerals and energy (including heat);
  - the provision of health, security, community and cultural infrastructure and other local facilities; and
  - climate change mitigation and adaptation, conservation and enhancement of the natural and historic environment, including landscape.
- 4.3 The NPPF encourages LPAs to work jointly to address strategic cross-boundary issues and demonstrate co-operation; whether through Joint Committees, Memorandums of Understanding (MoUs), evidence or Plans to demonstrate an agreed position. Further guidance on the Duty to Co-operate is set out in the Planning Practice Guidance (PPG)<sup>2</sup>, for example paragraph 11.

### Duty to Co-operate and Public Examination

- 4.4 Once a Plan is submitted for independent examination a Planning Inspector is appointed to test the Plan's legal compliance against the Duty to Co-operate

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<sup>1</sup> <https://www.gov.uk/guidance/national-planning-policy-framework/plan-making>

<sup>2</sup> <https://www.gov.uk/guidance/duty-to-cooperate>

and other legal requirements. This test precedes the tests of soundness. If a LPA cannot demonstrate that it has complied with the Duty then the Local Plan will not be able to proceed further in the examination. A failure to meet the Duty to Co-operate cannot be remedied through modifications after the Plan has been submitted for examination. Where the Duty has not been complied with, the Inspector can only recommend the withdrawal of the Local Plan, which would likely have subsequent implications for an authority such as service effectiveness, reputation and financial risks. It is therefore imperative that LPAs meet the Duty requirements throughout the plan-making process.

4.5 If the legal Duty test is passed, the Planning Inspector will then consider the tests of soundness, which in effect are reliant on the LPA's ability to demonstrate that the Plan is deliverable, and therefore based on effective co-operation with relevant organisations to address strategic cross-boundary planning matters. The four tests of soundness are:

- Positively prepared – the Plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- Justified – the Plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- Effective – the Plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- Consistent with national policy – the Plan should enable the delivery of sustainable development in accordance with the policies in the Framework.

4.6 All four tests need to be passed for a Plan to be considered suitable for adoption.

### **Duty to Co-operate and the South Essex LPAs**

4.7 Even though there have been historical joint working arrangements in place between the five South Essex LPAs and Essex County Council, the requirements of the Localism Act 2011 have made it evident through, for example, findings at public examinations and court decisions, that there is a need to establish a more formal protocol for co-operation in the future. Indeed, the preparation of a MoU is one of the joint working arrangements advocated in the NPPF.

4.8 Subsequently at a meeting of the South Essex Strategic Planning Members Group on 17 November 2016, Chief Executives, Leaders and Portfolio Holders for Planning (or their equivalents), agreed in principle, that the most appropriate and effective way forward would be to sign a high-level MoU with

each other, and then operate under its arrangements in respect of strategic planning and cross boundary matters. The appended South Essex Strategic Planning and Memorandum of Understanding (SEMoU) has therefore been developed and sets out how the South Essex LPAs and Essex County Council will comply with the Duty to Co-operate for their mutual plan-making and legal compliance benefit.

- 4.9 The SEMoU sets out agreed key principles for joint working, how the local authorities will work together (including key deliverables and outputs), the governance structure for any joint working, consultation between the local authorities, and monitoring and resourcing for collaboration and joint working between the five South Essex LPAs and Essex County Council. The SEMoU is absolutely clear that it does not override the statutory duties and powers of the LPAs and Essex County Council, is not enforceable by law and does not involve the delegation of any of the Council's functions. The SEMoU respects the sovereignty of the individual plan-making functions of the South Essex LPAs and Essex County Council. Other MoUs may be prepared in future to set out in more detail how the LPAs and Essex County Council will work together to tackle more detailed matters with respect to strategic planning in South Essex. Similarly, MoUs between Rochford District Council and other LPAs may be prepared where required.

#### **Duty to Co-operate and Rochford District's Local Plan-Making**

- 4.10 As the Council is at an early stage of reviewing its current local development plan, it is important that we work collaboratively with other organisations to demonstrate that all legal requirements under the Duty have been met and effectively influenced plan-making. The SEMoU sets out the high-level principles that the Council should follow in its local plan-making in line with the other LPAs in South Essex and Essex County Council.
- 4.11 The Council has worked jointly with other South Essex LPAs and Essex County Council over a long period of time, and the signing of this MoU signifies the formalisation of this approach under the Duty. The Council will therefore continue with progressing its new Local Plan, whilst exploring opportunities for joint working to effectively address strategic cross boundary issues.

### **5 ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 The alternative options considered include:
- a) The Council could choose to not sign the MoU. The SEMoU, however, has been agreed in principle by the South Essex Strategic Planning Members Group, and it is anticipated that other authorities party to the SEMoU will sign and endorse it under the Duty. If the Council adopts this approach it would then be challenging for the Council to demonstrate compliance with the Duty and the NPPF. This would compromise the preparation of the Council's new Local Plan and so is not considered an appropriate option.

## **6 RISK IMPLICATIONS**

- 6.1 The risks of not meeting the Duty to Co-operate are set out in this report.

## **7 RESOURCE IMPLICATIONS**

- 7.1 The SEMoU sets out high-level principles for joint working across South Essex. The strategic planning responsibilities of the Council are delivered by the Planning Policy Team, which is funded as part of the Council's Planning and Regeneration departmental budget. The current budget is allocated to deliver the new Local Plan. However, this budget must now deliver strategic, local and, where appropriate, neighbourhood planning. These potential additional areas of work may not have been taken fully in to account at the time of its allocation.
- 7.2 The SEMoU requires commitment to explore opportunities for effective cross boundary working, which includes the sharing of costs for joint technical studies or advice, for example. This approach is, and would continue to have, positive implications for budgets through economies of scale.
- 7.3 The Duty to Co-operate is a legal requirement, which extends beyond the Local Plan; therefore further funding to deliver the principles in the SEMoU may be required in the future. In terms of strategic planning it is highly likely that there would be resource implications in terms of staff time and budgets, depending on the approach agreed and taken forward.

## **8 LEGAL IMPLICATIONS**

- 8.1 Section 110 of the Localism Act 2011 places a Duty to Co-operate on Local Planning Authorities (LPAs) and County Councils (alongside some other prescribed organisations). This Duty requires them to engage constructively, actively and on an on-going basis to maximise the effectiveness of plans which cover strategic planning related matters
- 8.2 The NPPF encourages LPAs to work jointly to address strategic cross boundary issues and demonstrate co-operation; whether through Joint Committees, Memorandums of Understanding (MoUs), evidence or plans to demonstrate an agreed position. Further guidance on the Duty to Co-operate is set out in the Planning Practice Guidance (PPG)<sup>3</sup>, for example paragraph 11.

I confirm that the above recommendation does not depart from Council policy and that appropriate consideration has been given to any budgetary and legal implications.

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<sup>3</sup> <https://www.gov.uk/guidance/duty-to-cooperate>

LT Lead Officer Signature: \_\_\_\_\_



Date: 3 March 2017

**Background Papers:**

None.

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**MEMORANDUM OF UNDERSTANDING**

**FOR**

**STRATEGIC PLANNING**

**IN SOUTH ESSEX**

**DATE**      **2017**



# MEMORANDUM OF UNDERSTANDING FOR STRATEGIC PLANNING IN SOUTH ESSEX

## 1. Purpose

This Memorandum of Understanding (MoU) sets out a protocol for cooperation between the five local planning authorities in South Essex (Basildon, Castle Point, Rochford, Southend, Thurrock), and Essex County Council with respect to strategic planning issues. It sets out how the partners will comply with the Duty to Cooperate for their mutual benefit.

The Localism Act 2011 places a Duty to Cooperate on local planning authorities and county councils<sup>1</sup> (amongst other public sector organisations), requiring them to engage constructively, actively and on an on-going basis in the preparation of plans where this involves strategic matters. The National Planning Policy Framework encourages authorities to prepare joint, non-statutory documents, particularly where this provides evidence of having effectively cooperated to plan for issues with cross-boundary impacts<sup>2</sup>.

Although the Duty to Cooperate is not a duty to agree, local planning authorities should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their Local Plans for examination. Compliance with the Duty to Cooperate will need to be demonstrated at examination, prior to assessment of compliance with the tests of soundness.

Note: The five local planning authorities have a statutory duty to prepare local development plans, whilst Essex County Council and the Unitary authorities of Thurrock and Southend have a statutory duty to prepare local transport plans, waste and mineral plans. In the case of Southend, the waste local plan is already prepared jointly with Essex County Council.

The following key principles are agreed:

- Engage constructively, actively and on an on-going basis in relation to strategic planning matters under the Duty to Cooperate;
- Ensure a broad and consistent approach to strategic planning and development issues in the South Essex Area;
- Support better alignment between strategic planning, infrastructure review and investment priorities in South Essex;
- Adhere to the governance structure set out in the MoU and ensure that activities are delivered and actions are taken as required;
- Be accountable in terms of role and responsibilities as set out in the MoU;

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<sup>1</sup> Localism Act 2011, section 110.

<sup>2</sup> National Planning Policy Framework, paragraph 181.

- Be open and communicate about concerns, issues and opportunities in respect of collaboration and joint working;
- Act in a timely manner, recognising the time critical nature of consultations, technical projects and plan preparation;
- Adhere to statutory requirements. Comply with applicable laws and standards, data protection and freedom of information requirements;
- Encourage, develop and share best practice in terms of the Duty to Cooperate and strategic planning matters;
- Agreement on set outputs for delivery; and
- Ensure adequate resources and staffing are in place to undertake effective collaboration and joint working.

The South Essex local authorities have a long history of working together on planning matters across the sub-region. The local authorities continue to work together to promote a positive approach to planning for growth and development in South Essex and have agreed to sign this MoU to formally recognise this effort.

The local authorities agree to follow a protocol, in order to observe these key principles, and to meet the legal requirements of the Duty to Cooperate with regard to strategic planning matters (*engage constructively, actively and on an on-going basis*) and test of compliance as set out in the National Planning Policy Framework (*key strategic matters that should be addressed jointly*). The legal requirement of the Duty to Cooperate is noted as being separate from, but related to the Local Plan tests of soundness.

## **2. Parties to the Memorandum**

The MoU is agreed by the following local authorities:

Basildon Borough Council

Castle Point Borough Council

Essex County Council

Rochford District Council

Southend on Sea Borough Council

Thurrock Borough Council

### **3. Area Covered**

For the purposes of this MoU the geographic area of South Essex applies to the administrative areas of Basildon Borough, Castle Point Borough, Rochford District, Southend on Sea Borough and Thurrock Borough Councils.

### **4. Status**

This MoU cannot override the statutory duties and powers of the parties and is not enforceable by law. However the parties agree to the principles set out in this MoU.

This MoU is not a development plan, nor a legally binding document, but will be used in the consideration of how the South Essex local authorities have jointly approached strategic planning issues and legal compliance with the Duty to Cooperate.

In keeping with the principles of localism, this MoU respects the sovereignty of the individual local development plan-making functions of the South Essex local authorities. Therefore, it does not seek to determine the locations for development within local authority administrative areas. Furthermore, it does not seek to include prescriptive or directive policies which would limit the ability of the individual local authorities to meet their development needs in a locally appropriate manner.

This MoU may be supported by other documentation, and other subject specific MoUs, which set out in more detail how the parties will work together to tackle more detailed matters with respect to strategic planning in South Essex.

It is accepted that an individual party or group of parties that are signatories to this MoU may also be signatories to other MoUs between themselves, or with other parties outside South Essex in respect of the Duty to Cooperate.

## **5. PROTOCOL**

### **i. Deliverables and Outputs**

The local authorities will work together where appropriate to:

- Ensure a coherent and collaborative approach is undertaken for strategic and sub-regional planning matters across South Essex;
- Positively engage to comply with the requirements for Duty to Cooperate to achieve effective strategic and cross boundary outcomes;
- Identify and manage strategic planning matters (including those referred to in paragraph 156 of the NPPF) that impact on more than one local authority within South Essex;

- Ensure that strategic planning matters addressed by each local planning authority are, where appropriate, informed by the views of other local authorities across South Essex;
- Collaborate and seek to align local plans and associated local transport plans across South Essex to ensure the effective delivery of the levels of growth, sustainable development and transport provision proposed by the local planning authorities;
- Explore opportunities for the preparation and delivery of a joint Strategic Planning and Infrastructure Framework that sets out how long-term strategic planning in South Essex will be managed amongst all parties;
- Jointly commission technical evidence studies and related advice when and where necessary;
- Engage with the Mayor for London, as well as adjoining local authorities and their partnerships on strategic planning matters including participation with the Wider South East Local authorities;
- Consult and engage with other Duty to Cooperate bodies and other partners/stakeholders;
- Make joint representations on behalf of the South Essex authorities with regard to consultations by other local authorities, the Mayor of London, other public bodies and stakeholders on Strategic Planning matters covered by the Duty to Cooperate, wherever possible;
- Exploring opportunities for joint working to achieve a more cost-effective use of professional and financial resources; and
- Develop, maintain and keep under review at least annually, a joint work programme that brings together all strategic planning and cross boundary working.

Key outputs of this MoU are:

- Joint evidence base, including identification of various development needs;
- A joint Strategic Planning Framework to guide development and delivery principles;
- A joint Cooperation Monitoring Report, prepared annually to chart and monitor cooperation activities and their outcomes to plan-making and to feed into individual planning authority's Annual Monitoring Report;
- A joint Statement of Cooperation that can set out the agreed position on strategic planning and cross boundary matters in South Essex;
- Further MoU's on detailed matters, where appropriate.

## **ii. Governance, Roles and Responsibilities**

Each local authority will continue to be responsible for preparing, consulting on and adopting their own local development plan and the three Highway Authorities (Essex, Southend and Thurrock) their local transport plans under their own governance and approval arrangements.

For collaboration and joint working in South Essex the partners have agreed the following governance structure:

### **1) Strategic Planning Members Group**

The leadership and overview of work required to deliver the necessary outcomes from the collaboration on Strategic Planning and Duty to Cooperate will be through a Strategic Planning Members Group with representation from each of the participating authorities.

### **2) Strategic Planning Heads of Service Group**

The Members Group will be supported by a Heads of Service Group with each partner represented. The Heads of Service Group will provide strategic oversight and management of the joint work programme and will seek to deliver the majority of work through a separate Strategic Planning Officers Group.

### **3) Strategic Planning Officers Group**

The Officers Group will report to the Heads of Service Group. The Officers Group will prepare reports and oversee the day to day management of key joint tasks including consultation and the development of technical evidence.

Other Duty to Cooperate bodies, and partners may also be requested to provide advice and support to their work as necessary.

The Members Group, Heads of Service Group and Officers Group will meet on a regular basis and keep notes and records of each meeting. Terms of Reference will be established setting out the roles, responsibilities, administration and governance arrangements for each group and these will be revised annually to ensure they remain relevant.

## **iii. Consultation and liaison**

Each local authority will:

- Notify the other local authorities, party to this MoU, at each consultation stage in the preparation of its local development plan and in the case of the Unitary Authorities (Southend and Thurrock) and Essex County Council, plans relevant to their statutory function, including waste, minerals and transport;

- If requested, meet with, and discuss any issues raised by one or more of the other local authorities and take account of any views expressed on those issues;
- Consult with local authorities and key stakeholders outside of South Essex on key strategic planning matters in accordance with the principles of this MoU and the Duty to Cooperate;
- Prepare a record of any meetings on Duty to Cooperate issues with other local authorities and agree with the other local authority(s) that this is an accurate record of the discussion and agreed outcomes.

#### **iv. Monitoring and Review**

The South Essex Strategic Planning Members Group as part of its meetings will:

- Review work and work programmes undertaken jointly by the South Essex local authorities;
- Monitor the preparation of planning policy documents across South Essex and discuss strategic planning issues;
- Oversee preparation of a Cooperation Monitoring Report;

The local authorities will keep this MoU under review to ensure it remains fit for purpose.

#### **v. Resourcing**

- Local authorities should ensure that adequate resources are provided in order to undertake the joint work programme and consultation on strategic planning matters as set out in this MoU;
- Additional resources may be provided by other relevant bodies, as agreed to undertake specified tasks under the work programme.

#### **vi. Dispute Resolution**

If any party has any issues, concerns or complaints about any matter in this MoU, that party shall notify the other parties and the parties shall then seek to resolve the issue by a structured communication. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the HoS Group, which shall decide on the appropriate course of action to take. If the matter cannot be resolved by the HoS Group the matter will be passed to Chief Executives Group and finally may be escalated to the Strategic Planning Members Group for resolution.

If any party receives any complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier) in relation to this MoU, the matter shall be promptly referred to all parties. No action shall be taken in response to any such complaint, claim or action, to the extent that such response would adversely affect the parties to the MoU, without the prior approval of the Strategic Planning Members Group (or its nominated representatives).

#### **vii Liabilities**

Except as otherwise agreed, the parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU.

The parties agree to share costs and expenses arising from any joint project between them, as identified in any work programme or procurement of joint services.

#### **viii. Limitations**

The local planning authorities recognise that there will not always be full agreement with respect to all of the issues on which they must cooperate. For the avoidance of doubt this MoU will not restrict the discretion of the local authorities in the determination of any planning applications or in the exercise of any of its statutory planning functions and other powers, or duties, nor affect or seek to influence individual responses to consultations.

#### **ix. Review of the MoU**

This MoU is effective from the date it is signed by the Chief Executive and Leaders of all parties. It will be reviewed at the start of each municipal year in order to inform any changes necessary going forward.

#### **x. Termination**

Any party may terminate their involvement by giving at least three months notice in writing to each of the other parties.

Withdrawal from the MoU does not however remove a local authority's Duty to Cooperate pursuant to the relevant legislation and they agree by virtue of withdrawal, that they will put in place alternative, effective mechanisms for cooperation with the other MoU parties.

## **xi Variation**

This MoU may only be varied by written agreement of all parties through Chief Executives and Leaders, then ratified by the Members Group.

## **xii Intellectual Property Rights**

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

If the MoU is terminated, all parties agree that any reports, studies or any other information which has been jointly prepared by the parties can be used by each of the parties separately.

## **xiii Freedom of Information Requests**

If any party receives a Freedom of information request (made under the Freedom of Information Act 2000) in respect of shared work associated with the MoU it will be shared at the earliest opportunity with other relevant local authorities in order to determine and achieve a consensus as to what information shall be released.

## **Table of Signatories**

<b>Signature</b>	<b>Role</b>	<b>Authority</b>	<b>Date</b>
	<b>Leader of Council</b>	Rochford District Council	3 March 2017
	<b>Managing Director</b>	Rochford District Council	3 March 2017