

# **Replacement Essex Minerals Local Plan Scoping Report**

## **Approach to Meeting the Duty to Cooperate**

**September 2023**



Essex County Council

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## 1. Introduction and Purpose

- 1.1 This Scoping Report sets out the proposed approach to meeting the requirements of the Duty to Cooperate (DtC) associated with the emerging new Replacement Essex Minerals Local Plan (MLP). Please note that while it is the intention of the Council at this time to progress Duty to Cooperate activities as outlined within this report, any subsequent changes to local circumstances, Government requirements, guidance, and acknowledged best practice, may result in the need to progress Duty to Cooperate activities through an alternative approach. The Council will endeavour to keep relevant DtC bodies updated on any significant changes to the approach to meeting the requirements of the DtC as outlined within this Report.
- 1.2 Please note that while it is the intention of the Council at this time to progress Duty to Cooperate activities as outlined within this report, any subsequent changes to local circumstances, Government requirements, guidance, and acknowledged best practice, may result in the need to progress Duty to Cooperate activities through an alternative approach. The Council will endeavour to keep relevant DtC bodies updated on any significant changes to the approach to meeting the requirements of the DtC as outlined within this Report.
- 1.3 To begin to consider how the Council will engage with relevant DtC bodies, this Scoping Report presents the initial proposed strategic cross-boundary planning matters considered to be relevant to the production of the Plan at this stage, together with the proposed governance arrangements, and the approach and mechanisms for taking forward joint work and discussions relating to each matter. The Report also sets out the proposed approach to recording engagement through the production of statements of common ground and a DtC Statement of Compliance.

## 2. Contextual Review

### National Planning Policy Context

- 2.1 It is imperative for the Council to ensure that the DtC is met in producing the Local Plan. Any failure to meet the DtC cannot be remedied through the independent examination process.
- 2.2 Paragraphs 24-27 of the National Planning Policy Framework (NPPF, 2021) provide requirements relating to maintaining effective cooperation. Requirements include:
  - The need to collaborate with other relevant authorities to identify the relevant strategic matters which need to be addressed in plans,
  - Effective and on-going joint working to produce a positively prepared and justified strategy,

- Joint working should help to determine whether additional infrastructure is necessary; and
- Preparing and maintaining one or more statements of common ground, documenting the cross-boundary matters being addressed and any progress made in cooperating to address these matters.

2.3 Paragraph 35 of the NPPF relates to the tests of soundness for local plans. To be 'effective' a local plan must be based on effective joint working on cross-boundary strategic matters, as evidenced by the statement(s) of common ground.

2.4 Further details on undertaking effective cooperation through the plan making process is included within the Planning Practice Guidance<sup>1</sup> (PPG).

2.5 The Procedure Guide for Local Plan Examinations<sup>2</sup> provides practical guidance on the procedural aspects of the examination of local plans. In relation to demonstrating compliance with the Duty to Co-operate, the Guide<sup>3</sup> suggests that:

*In order to demonstrate compliance with the duty to co-operate (section 33A of the PCPA), the most helpful approach is for the local planning authority (LPA) to submit a statement of compliance with the duty. The statement of compliance should identify any relevant strategic matters and how they have been resolved – or if they have not, why not. It should detail who the LPA has co-operated with and on which strategic matter(s), the nature and timing of the co-operation (e.g. by including meeting notes), and the outcomes of the co-operation, including how it has influenced the plan. As part of this process, NPPF paragraph 27 advises that the LPA should prepare one or more statements of common ground with relevant bodies.*

2.6 In May 2022 the Government published the Levelling-Up and Regeneration Bill setting out proposed reforms to the planning system. As part of the Bill the Government proposes to repeal the DtC and replace it with a 'flexible alignment test' to be set out in national policy (no further information from the Government has been provided at this stage). Where the submission of the emerging new MLP is proposed to take place before June 2025, the production of the MLP will be undertaken through the current planning process through the identified transitional arrangements. As a result, the DtC in its current form will continue to apply to the production of the MLP.

### Local Planning Policy Context

2.7 The current Essex Minerals Local Plan was adopted on 8<sup>th</sup> July 2014. Regulation 10A of The Town and Country Planning Regulations 2012 states that a planning authority must complete an assessment whether to review of its local plan every five years, starting from the date of adoption of the local plan. A formal review of

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<sup>1</sup> [www.gov.uk/guidance/plan-making#maintaining-effective-cooperation](https://www.gov.uk/guidance/plan-making#maintaining-effective-cooperation) see Paragraph: 009  
Reference ID: 61-009-20190315 onwards

<sup>2</sup> The Procedure Guide for Local Plan Examinations, 7th Edition, Planning Inspectorate, February 2022

<sup>3</sup> See paragraph 1.15

the Minerals Local Plan (MLP) therefore commenced in late 2019 with a consultation on the preferred approach being concluded in late April 2021. A further tailored engagement on the proposed changes, notably covering Policy S6 (which deals with aggregate provision) as well as a call for new sites was carried out in March 2022.

- 2.8 To ensure that the County has an up-to-date Plan which has sufficient site allocations to meet future needs for aggregates, following the consultation process, it was determined that the Council would produce a new MLP with a Plan period which extends to 2040.
- 2.9 To inform the production of the new Local Plan and account for the extended Plan period, a further call for sites consultation was undertaken in September 2022. The new MLP will set a policy framework within which the best possible use of finite resources can be made and will look towards allocating sites for future mineral extraction and associated development to 2040 with a sufficient aggregates landbank in place thereafter for at least 7 years. The Plan will support the delivery of aggregates / minerals and will contain policies relating to recycling and secondary processing, the safeguarding of resources and facilities, and the restoration of mineral sites. In addition, a new MLP will appropriately seek to address challenges associated with climate change and will include up to date policies which support water management and security, biodiversity net gain, and the protection of important landscapes as well as other development management policies.
- 2.10 A further Regulation 18 consultation on the new MLP is proposed to take place in January 2024.

### **3. Our Approach to Meeting the Requirements of the Duty to Cooperate**

- 3.1 There has been active regular correspondence with DtC bodies since the start of the Local Plan review process. Initial engagement in relation to the production of the new Local Plan has included meetings and regular correspondence to provide updates on the work being undertaken. Where issues have been raised by DtC bodies, these have resulted in regular ongoing meetings taking place. The DtC engagement undertaken to date, and all future Duty to Cooperate activities undertaken to support the production and progression of the Local Plan, will be outlined within the Duty to Cooperate Statement of Compliance (see below for further details).
- 3.2 Based on the DtC requirements and guidance summarised above, the Council will seek to undertake the following DtC activities to support the production of the emerging Local Plan.

**Proposed Duty to Cooperate Activities**

Type of engagement / consultation	Key DtC tasks	Stage	Period
DtC engagement	MLP update correspondence	Pre Reg 18	June 2023
DtC engagement	Online briefing(s) with all DtC bodies to present the proposed approach to the DtC, to agree potential strategic cross boundary matters, and to present emerging work on the MLP.	Pre Reg 18	August 2023
DtC engagement	Share draft MLP Site Assessment Report for informal review and comment by all local authorities with assessed sites within their area.	Pre Reg 18	August 2023
Formal consultation	Consultation on draft Local Plan including the opportunity to comment on the site assessment report and methodology. Please note, at this stage the Council will not identify the preferred site allocations it proposes to take forward for inclusion in the plan.	Reg 18	January 2024
DtC engagement	Meet with DtC bodies as required to discuss consultation comments to inform the next stage of Local Plan drafting.	Post Reg 18	Spring 2024
n/a	Produce a report summarising DtC activities to date. This information will later be included within the DtC Statement of Compliance (see below for further details).	Post Reg 18	Summer 2024
DtC engagement	Online briefing with DtC bodies to present the emerging draft Local Plan and to prepare bodies for engaging in the finalisation of the Plan and associated evidence base.	Pre Reg 19	Autumn/ Winter 2024
DtC engagement	Share relevant emerging draft Local Plan material and evidence base documents with DtC bodies for informal review and comment	Pre Reg 19	Winter 2024/25
DtC engagement	Meetings/correspondence with DtC bodies as required to discuss emerging Plan and evidence base.	Pre Reg 19	Winter 2024/25
n/a	Produce DtC Statement of Compliance (SoC).	Pre Reg 19	Winter 2024/25
Formal consultation	Finalise and publish draft Local Plan and draft DtC SoC for consultation.	Reg 19	February 2025
DtC engagement	Produce and circulate draft Statements of Common Ground (SoCG) as required to all relevant DtC bodies.	Post Reg 19	Spring 2025
DtC engagement	Meetings/correspondence with DtC bodies as required to discuss Reg 19 Local Plan comments and draft SoCG.	Post Reg 19 / pre submission	Spring 2025
n/a	Produce updated DtC SoC.	Post Reg 19 / pre submission	Spring 2025

Type of engagement / consultation	Key DtC tasks	Stage	Period
n/a	Finalise and publish the submission draft Local Plan, all completed SoCG, and the DtC SoC.	Submission	2024/5

### Statements of Common Ground

- 3.3 SoCG will be produced to accompany the submission of the Local Plan to assist the Inspector(s) in understanding the status of strategic cross boundary matters and how they may need to be considered through the examination.
- 3.4 The SoCG will set out the DtC activities and engagement with each DtC body which have taken place to support the production of the Plan to date and will summarise all strategic cross boundary matters which have been considered with DtC bodies relating to the content of the draft Local Plan. Through the SoCG, the Council will seek agreement from each DtC body that the summary of DtC activities and engagement presented within the SoCG is accurate, and that the requirements of the DtC have been met through the production of the MLP. The SoCG will summarise all areas of agreement and disagreement as relevant between DtC bodies. The completed and signed DtC SoCG will be published alongside the submission of the MLP.

### Production of the Duty to Cooperate Statement of Compliance and Activities Register

- 3.5 The Procedure Guide for Local Plan Examinations<sup>4</sup> recommends the production of a DtC Statement of Compliance (SoC), which outlines how the Council has met the requirements of the DtC through the production of the Local Plan. The Council will publish the DtC SoC alongside the Regulation 19 publication of the draft Local Plan. This version of the DtC SoC will summarise the DtC activities and engagement which have taken place to date between the Council and relevant DtC bodies, to demonstrate how the Council has sought to meet the requirements of the DtC throughout the production of the Plan. The DtC SoC will summarise all strategic cross boundary matters considered during the production of the Plan and will include evidence of all DtC activities which have taken place.
- 3.6 The collation of information for the DtC SoC will include a DtC summary report produced following the Regulation 18 Local Plan consultation. In addition, the Council will be collating evidence of all DtC related engagement through the maintenance of a DtC Activities Register, which will be presented through a spreadsheet appended to the DtC SoC.

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<sup>4</sup> The Procedure Guide for Local Plan Examinations, 7th Edition, Planning Inspectorate, February 2022

3.7 The DtC SoC will be updated following the Regulation 19 publication of the Local Plan to accompany the submission of the Plan for examination. The updated DtC SoC will include details of the engagement with DtC bodies which has taken place following the Regulation 19 publication of the Local Plan. The update will also summarise matters and issues which have been addressed since the Regulation 19 representations were submitted and any strategic cross boundary matters and issues which are continuing to be considered between relevant parties. The updated DtC SoC will include evidence of all DtC activities which have taken place since the Regulation 19 publication of the Local Plan.

## 4. Prescribed Duty to Cooperate Bodies

4.1 The Town and Country Planning (Local Planning) (England) Regulations 2012<sup>5</sup> sets out the following prescribed bodies relevant to Essex to which the Duty to Cooperate applies:

- Environment Agency
- Historic England
- Natural England
- The Mayor of London
- Civil Aviation Authority
- Homes England
- NHS / Integrated Care Board (Mid and South Essex, Suffolk and North East Essex)
- Office of Rail and Road
- National Highways
- Integrated Transport Authority
- Highways Authority
- Marine Management Organisation
- Essex Local Enterprise Partnership
- Local authorities in Essex:
  - Basildon Borough Council
  - Braintree District Council
  - Brentwood Borough Council
  - Castle Point Borough Council
  - Chelmsford City Council
  - Colchester City Council
  - Epping Forest District Council
  - Harlow Council
  - Maldon District Council
  - Rochford District Council
  - Tendring District Council
  - Uttlesford District Council
- Surrounding authorities:
  - Thurrock Council
  - Southend on Sea City Council
  - Medway Council

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<sup>5</sup> [www.legislation.gov.uk/ukxi/2012/767/regulation/4/made](http://www.legislation.gov.uk/ukxi/2012/767/regulation/4/made)



- Kent County Council
- Suffolk County Council
- Hertfordshire County Council
- Cambridgeshire County Council
- Norfolk County Council
- Greater London Authority
- Peterborough City Council
- Broxbourne Borough Council
- East Herts District Council
- South Cambridgeshire District Council
- West Suffolk Council
- Babergh and Mid Suffolk District Council
- East Suffolk District Council
- North Herts Council
- Central Bedfordshire Council
- London Borough of Havering Council
- London Borough of Redbridge Council
- London Borough of Enfield Council
- London Borough of Waltham Forest Council
- East of England Aggregates Working Party (AWP)

4.2 While the AWP are not specifically identified as a DtC body, the technical working group provides a useful regional forum to engage with surrounding authorities.

4.3 The Council intends to engage as proposed in section 3 above with all of the listed DtC bodies.

## 5. Identification of Strategic Cross Boundary Matters

5.1 The Council will take a flexible approach to engagement with DtC bodies and will seek to agree an appropriate level of engagement with each DtC body subject to the extent of identified strategic cross boundary matters which are relevant.

5.2 To inform our approach to engaging with DtC bodies, the Council has prepared an initial list of potential strategic cross boundary matters which are considered to be relevant to the production of the Local Plan. These are presented in the table below.

Strategic cross boundary matters	Relevant DtC bodies
<p>i) <u>Establishing an aggregates mineral requirement for the area</u></p> <p>The amount of aggregates mineral proposed to be provided over the Plan period will be based on forecast future demand calculated by the Minerals Need Assessment within the MLP evidence base.</p>	<p>Surrounding minerals planning authorities AWP</p>
<p>ii) <u>The spatial strategy for extraction</u></p>	<p>Environment Agency Historic England Natural England</p>

<p>The approach which the Council will take to select minerals sites and the location of mineral site allocations, taking into account the location of mineral resources, transport connections, the location of transshipment sites, opportunities to expand existing sites, and proposed development sites where there may be opportunities for prior extraction.</p> <p>The allocation of sites will be informed by the Site Assessment included within the MLP evidence base.</p>	<p>The Mayor of London Civil Aviation Authority Homes England Office of Rail and Road National Highways Highways Authority Marine Management Organisation Essex Local Enterprise Partnership Local Planning Authorities in Essex Surrounding authorities</p>
<p>iii) <u>Transportation of minerals</u></p> <p>Taking into account minerals needs in other area, the Plan will consider the extent of minerals likely to be exported, how minerals will be exported out of the County, and the availability and the need for additional transshipment sites and associated infrastructure.</p>	<p>Office of Rail and Road National Highways Highways Authority Marine Management Organisation Local Planning Authorities in Essex Surrounding authorities</p>

5.3 The DtC bodies which are considered to be relevant to each of the matters listed are indicated. The identified strategic cross boundary matters may be included within a SoCG with each DtC body where necessary. The Council will seek to refine the identified strategic cross boundary matters through engagement with the DtC bodies.

## 6. Governance Arrangements

- 6.1 The Council will seek to agree appropriate and where necessary bespoke approaches to agreeing SoCG with each DtC body as required. With surrounding authorities the Councils preference would be for SoCG to be signed by an appropriate cabinet/portfolio holder or council leader. For other organisations we would seek SoCG to be signed by an appropriate director or equivalent.
- 6.2 Attendance at DtC meetings will be subject to the matters and issues being discussed and the stage of DtC engagement. It is possible that meetings with local authorities in Essex and surrounding authorities may require Member level attendance and input at agreed stages.
- 6.3 To reduce the potential for delays in the progression of DtC engagement, the Council would encourage participating authorities to obtain delegated authority where possible to finalise the completion of SoCG.

## 7. Next Steps

- 7.1 The purpose of producing and circulating this DtC Scoping Report is to present our proposed approach to meeting the requirements of the DtC through the production of the emerging new MLP. Following the circulation of the DtC Scoping Report in July 2023 and this subsequent update, the Council will seek to take forward the DtC activities proposed within this Report.