

# **The Duty to Co-operate:**

A Devon-wide co-operation protocol

**Planning strategically  
across local boundaries**

March 2014



West Devon  
Borough Council



South Hams  
District Council



HEART OF THE SOUTH WEST

Local Enterprise Partnership



Safe roads, reliable journeys, informed travellers

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# 1. Introduction

- 1.1** The duty to co-operate in relation to planning of sustainable development is enshrined in law through Section 33A of the Planning and Compulsory Purchase Act 2004 (PCPA) (inserted by Section 110 of the Localism Act 2011). It is also included within the National Planning Policy Framework (NPPF) specifically in terms of planning strategically across local boundaries. The NPPF also states that in two tier areas, County and District Authorities should cooperate with each other on relevant issues. National Planning Practice Guidance provides further detail regarding the Duty to Cooperate.
- 1.2** The establishment of this wider-Devon protocol forms a firm basis for discussing and understanding strategic issues, evaluating options to address such issues and agreeing shared outcomes and conclusions wherever possible. It will therefore help to inform decision-making by individual Local Authorities and other organisations, but does not constrain their ultimate responsibilities for policy making or replace formal consultation processes. In addition, it does not replace any existing co-operation regimes which have already been established.
- 1.3** The protocol applies to strategic matters needing to be addressed jointly and/or consistently by at least two Local Authorities. The protocol applies to a range of strategic matters, particularly:
- Exercising strategic functions and responsibilities;
  - Matters of policy and strategy (in particular plan preparation, implementation, monitoring and other cross-boundary policy issues); and
  - Matters of infrastructure, development and plan delivery.
- 1.4** These three areas of work should be supported by co-operation on:
- Agreed and shared data and evidence;
  - Agreed collection and analysis methodologies;
  - Monitoring of data collected; and
  - The development of consistent policy approaches and principles.
- 1.5** This protocol identifies principles and mechanisms for co-operation between Local Authorities in the wider Devon area together with a range of other organisations. Although it is recognised that co-operation will also be required with a number of other organisations this framework does not specifically cover these relationships.
- 1.6** For the purpose of this protocol, the administrative areas within wider Devon are those covered by:
- Devon County Council (including all District Council areas, Dartmoor National Park and the western part of Exmoor National Park);
  - Plymouth City Council; and
  - Torbay Council.
- 1.7** The Duty to Co-operate is required by legislation. However, the signatory organisations also recognise that on-going co-operation will proactively identify potential opportunities for joint working which could deliver efficiency savings. It is likely that there will significant savings through joint working, particularly by front-

loading data collection and analysis, joint commissioning and shared policy development.

- 1.8** The protocol sets out a strategic framework to enable efficient, coordinated and consistent co-operation on agreed matters. This does not preclude co-operation arrangements between organisations on specific spatial issues as is appropriate. Such relationships will specifically operate between Authorities covered by this protocol and other neighbouring Councils. The protocol also identifies the topic areas which may require specific co-operation between some, or all, of the organisations listed. Finally, the protocol sets out the governance arrangements that have been agreed in order to ensure the efficient functioning of co-operation activities as covered by the protocol.
- 1.9** The protocol is intended to be a living document setting the overarching framework for co-operation as part of fulfilling strategic planning responsibilities. Co-operation between organisations will develop and grow over time as procedures become clear, working arrangements mature and examples of best practice are disseminated.
- 1.10** Irrespective of the timetables for plan preparation, and whether or not Local Authorities already have policy documents adopted, on-going co-operation will still be required to ensure the soundness of emerging plans. This protocol supports this by providing a framework for on-going co-operation.

## **2 Organisations covered**

- 2.1** There are a number of organisations which should co-operate on the various strands of work identified in this protocol. The way in which co-operation should operate will vary according to the activities being undertaken and the needs and responsibilities of the organisations involved.
- 2.2** Significant co-operation is a characteristic of the work undertaken by Local Authorities, Government Agencies and other public bodies and is therefore on-going. Organisations have existing co-operative relationships with specific bodies depending on the spatial nature of the work being undertaken and the issues being considered. This should continue.
- 2.3** Meeting the Duty to Cooperate suggests the need to formalise such relationships, particularly in terms of evidencing how these have worked. The Planning and Compulsory Purchase Act also specifically identifies Local and County Planning Authorities within the scope of the Duty, while a list of prescribed organisations is set out in Regulation 4 of the Town & Country Planning (Local Planning) (England) Regulations 2012 as amended (the Regulations). In particular, co-operation is required in order to develop sound plans.
- 2.4** As per the Town and Country Planning (Local Planning) (England) Regulations 2012, the organisations with whom Local Planning Authorities are required to co-operate include a range of organisations including government Agencies. Upper tier Authorities are also required to co-operate with these organisations. It is considered particularly important to liaise closely and through an on-going mechanism with the following organisations:
- Environment Agency;
  - Natural England;
  - Highways Agency; and
  - Highway Authorities.
- 2.5** Although not included specifically within this list, there are other groups with whom Local Authorities will need to co-operate. These are set out by the Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2012). Relevant organisations are:
- The relevant Local Enterprise Partnership; and
  - The relevant Local Nature Partnership.
- 2.6** The full list of organisations listed within the Town and Country Planning (Local Planning) (England) Regulations 2012 is included in Appendix A.
- 2.7** Although all these organisations are referenced in some way in the Regulations it is not appropriate for all such organisations to be covered by this protocol due to the number of organisations, their spatial scope and the requirements they themselves have for co-operation for exercising their own functions. The organisations specifically covered by this protocol are included in Appendix B.
- 2.8** It should be noted that this protocol does not aim to provide the entire framework for co-operation in the Devon area and the list of organisations which should co-operate in the exercising of their functions is not exhaustive. Within the overarching

framework provided by this Protocol, the Devon Local Authorities, Agencies, Local Enterprise Partnership and the Local Nature Partnerships will continue to work together through more local arrangements as appropriate.

- 2.9** Co-operation activities are also on-going with Authorities outside of Devon, particularly Cornwall Council, Somerset County Council and Dorset County Council and the Local Planning Authorities. These activities should continue.
- 2.10** Although the various organisations are specifically identified for co-operation on issues of plan preparation, co-operation should also extend to additional activities as may be required by the Agencies, Local Enterprise Partnership and the Local Nature Partnerships as they exercise their functions.

### **3 Co-operation required between Local Authorities**

#### **3.1 Exercising strategic planning functions and responsibilities**

- 3.1.1 The duty is most important in relation to the preparation of Development Plan Documents that are subject to an Examination. In this case, compliance with the duty is a first essential test at the Examination. However, there is a requirement that the duty to co-operate be satisfied on an on-going basis in exercising the functions of Local Authorities and other organisations. There are on-going strategic matters over which the Local Authorities in Devon and other organisations already co-operate and this should continue.
- 3.1.2 The signatories to this protocol have agreed the specific aspects of various planning-related topic areas that should be encompassed in co-operative activities and therefore are covered by this protocol.
- 3.1.3 The nature of the co-operation on these issues is explored and explained in more detail in Appendix C in terms of the scope of co-operation, the outcomes sought, and how co-operation may take place. This also sets out the specific actions which the Planning Authorities have agreed to undertake.
- 3.1.4 The specific aspects of the topic areas for co-operation are based on the content of the NPPF. There are likely to be other matters that should be addressed on an on-going basis as they arise. These topics and issues are to be discussed through the Officer Steering Group associated with this protocol (and discussed in section 6) in order to consider which associated discussions need to take place within the framework of the protocol.
- 3.1.5 It should be noted that co-operation between all Authorities covered by this protocol will not always be required for every aspect of every topic area. This is because some issues and topics are only relevant to a defined spatial area and specific Authorities.
- 3.1.6 This approach ensures that the protocol is flexible to acknowledge additional, but uncertain, issues which will require co-operation. It also ensures that co-operation does not become over laborious or prescriptive.
- 3.1.7 A key outcome of the agreement enshrined within the protocol is to ensure that co-operation will be undertaken in a comprehensive and systematic way. Agreed, evidence-based outcomes will be presented clearly to allow political agreement to be sought and identified.

#### **3.2 Co-operation on matters of plan and strategy preparation**

- 3.2.1 In preparing plans and strategies, particularly documents which are subject to Examination, fulfilling the duty to co-operate is a legal requirement. The Devon Local Authorities have, however, agreed that there are a number of other plans which should be prepared in the context of the duty to co-operate. A list of plans which will require co-operation is included in Appendix D. This list is not intended to be exhaustive. This list will be kept up to date by the Officer Steering Group for the duty to co-operate protocol.



### 3.2.2 Co-operation on plan preparation will cover the following:

- Cross-boundary issues, particularly in relation to strategy development and policy alignment;
- The establishment of consistent data sets (potentially including Sustainability Appraisal, Strategic Environmental Assessment, Habitats Regulation Assessment, sharing of evidence/data and joint commissioning where appropriate);
- Agreed mechanisms for on-going engagement through the plan preparation process and the provision of consultation responses;
- Master planning;
- Infrastructure planning;
- Demographic forecasting and housing projections; and
- Agreeing guiding principles and strategic priorities.

3.2.3 The breadth of co-operation on these areas of work will depend upon the extent of the strategic and cross-boundary issues associated with them. This means that there will not always be a need for detailed co-operation with all signatories of this protocol.

3.2.4 In some cases it may be appropriate to consider the potential for a joint plan, however, in most cases, joint evidence, discussion and consistent plan preparation timetables can provide an effective and flexible way of joint working to secure a consistent approach to cross-boundary issues.

3.2.5 There are likely to be resource implications associated with co-operation on plan preparation and infrastructure delivery. Organisations should endeavour to provide the required resources available to enable the lead organisation to undertake its functions effectively and in a timely manner. Where resources are limited or unavailable the organisation should inform the lead organisation of the level of input which they can offer

3.2.6 This protocol provides a framework through which the signatories will act/respond formally to issues and matters of discussion. It forms the basis for discussing issues, evaluating options to address such issues and agreeing outcomes wherever possible but ultimately respects the individual identities and interests of its signatory organisations. Should agreements on strategic issues not be achieved, positions of compromise should be negotiated. Where such compromises cannot be achieved, records should be kept identifying points of common ground, points of disagreement and the attempts made to resolve concerns.

### **3.3 Co-operation on plan and infrastructure delivery**

3.3.1 Infrastructure delivery is vital to both plan implementation and development delivery. In this context, infrastructure delivery will include more traditional 'grey infrastructure' together with green, blue and flood defence infrastructure. It is vital to draw together different Local Authorities, Agencies, Local Enterprise Partnership and the Local Nature Partnerships in a consistent and systematic way to ensure appropriate infrastructure and development delivery which will also help to deliver the content of plans and support sustainable development. In particular such infrastructure will mitigate the impact of development and helped to ensure the achievement of plan objectives and strategy.

3.3.2 Co-operation on infrastructure delivery will particularly include:

- Infrastructure planning (including capacity and needs assessments and the preparation of Infrastructure Delivery Plans);
- Agreeing infrastructure priorities through appropriate governance mechanisms;
- Enabling infrastructure to provide multiple benefits and fulfil shared priorities;
- Consideration of the phasing of infrastructure delivery;
- The co-ordination of funding sourcing;
- The monitoring of funding revenue and availability; and
- The agreement of infrastructure programme management.

3.3.3 The breadth of co-operation on these areas of work will depend upon the extent of the strategic and cross-boundary issues associated with them. This means that there will not always be a need for detailed co-operation with all signatories of this protocol.

3.3.4 In many cases it will be necessary to co-operate specifically with private sector bodies, particularly utilities companies and infrastructure providers.

3.3.5 In order to ensure that the success of Local Plans in achieving strategic objectives can be assessed, plan monitoring will be vital. A strategic, and where possible, co-ordinated approach to this issue, looking at cross-boundary issues and priorities will be required.

## **4 The role of Agencies, Partnerships and other organisations**

**4.1** Although the duty to co-operate is centred upon the need for co-operation between Local Authorities, it also applies to other organisations, including Government Agencies, the Local Enterprise Partnership and the Local Nature Partnerships. As such, the following organisations are signatories to the protocol:

- Environment Agency;
- Natural England;
- Highways Agency;
- Heart of the South West Local Enterprise Partnership; and
- Devon Local Nature Partnership.

**4.2** All organisations listed in Appendix A of this protocol have agreed to co-operate as appropriate and required in matters of strategic planning. This will ensure that all signatory organisations are consistently involved in discussions identifying strategic matters (county-wide and sub-county) that will require cross-boundary co-operation.

**4.3** Local Authorities will engage with the organisations listed in Appendix B, as appropriate, in all stages of plan preparation, infrastructure planning and master planning from scoping onwards as appropriate. The Agencies, Local Enterprise Partnership and Local Nature Partnership will respond to this engagement in positive way, providing input into strategic planning matters where it is relevant to their statutory remit.

**4.4** It should be noted that in some work areas, detailed discussion with all signatories may not be required. Genuine two-way discussions will take place to ensure that the full range of organisations have an effective and meaningful framework for identifying matters arising from planning activities as soon as they become apparent. This will allow issues to be incorporated as a consideration in on-going planning processes. The lead organisation will approach other relevant organisations to mutually agree the required level of co-operation.

**4.5** Co-operation will be meaningful, consistent and iterative. This may therefore result in the need for engagement with organisations not currently covered by the Protocol or invitations for other organisations to endorse it.

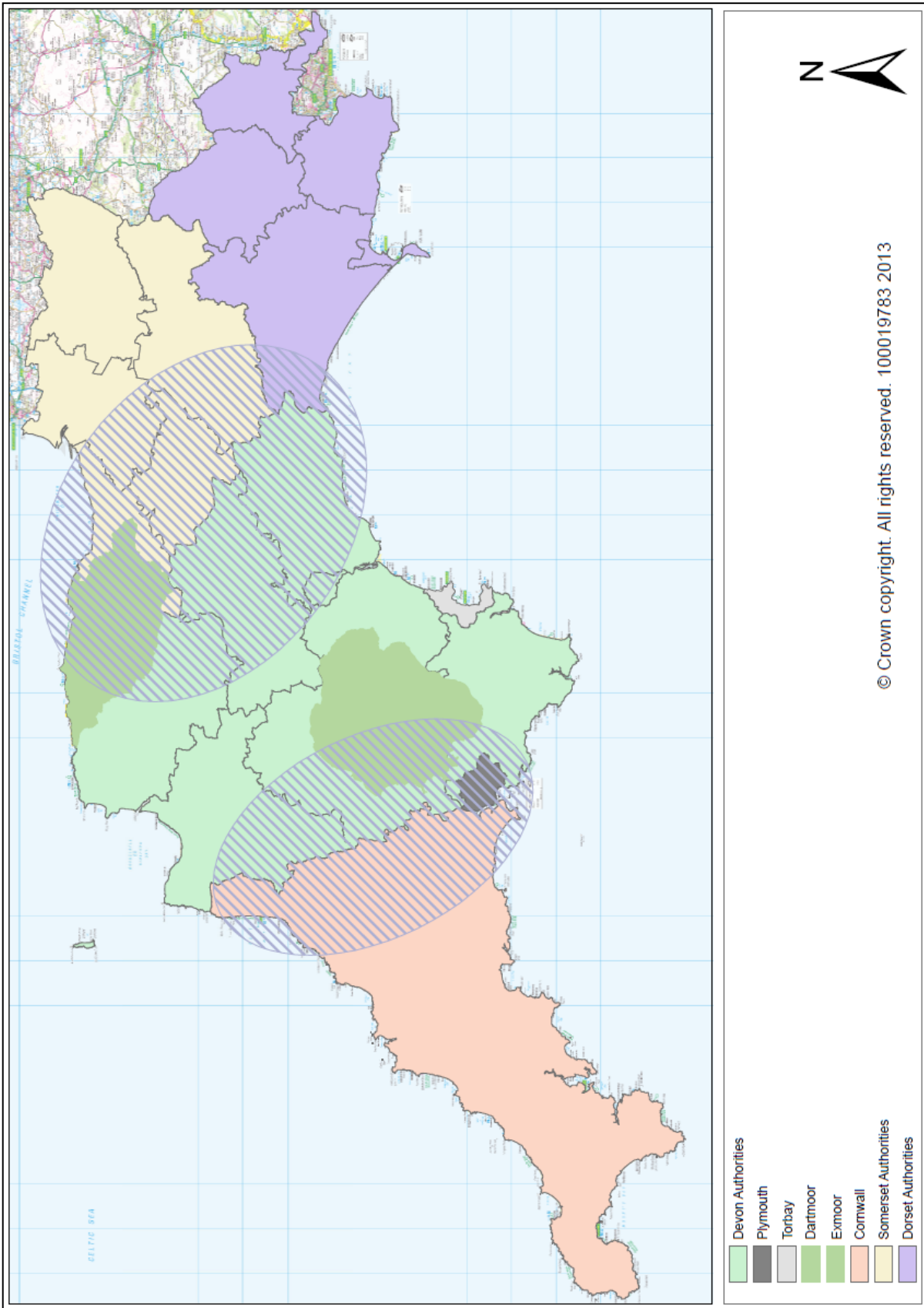
### **Key co-operation commitments**

**4.6** Government Agencies, the Local Enterprise Partnership and the Local Nature Partnerships will engage, involve and co-operate with all signatories of this protocol in their own functions as is required. In addition, they will identify matters arising from their functions and plan-preparation as soon as they become apparent in order for them to be incorporated as a consideration in on-going strategic decision making processes.

- 4.7** The Local Authorities will engage in the development of strategies, plans and investment programmes being prepared by the Agencies and Partnerships. This will ensure that such documents are based upon sound evidence and reflect the priorities of the Local Authorities. Specific examples of documents in which the Local Authorities will need specific involvement are the LEP Growth Plans and LNP action plans.
- 4.8** Matters arising which require co-operation will be brought to the attention of the Local Authorities by the relevant organisation as they arise. Issues will be disseminated via the Officer Steering Group.
- 4.9** In some cases, it will be sufficient to identify and agree that there is no need for on-going co-operation between two or more of the bodies. In other cases, detailed and lengthy co-operation will be required. It will be for the lead organisation to suggest the level of co-operation required through discussions and agreement with the other relevant organisations providing input into the process in question. The level of co-operation should be identified as reasonable and proportionate through agreement between the lead organisation and the organisation feeding into the process.
- 4.10** It is acknowledged that not every organisation with whom Local Authorities are required to co-operate during planning activities are signatories to this protocol. On-going co-operation will still be required with other organisations to ensure that their interests are considered appropriately in planning activities.

## **5 Beyond Devon**

- 5.1** There are issues of plan preparation, infrastructure delivery and other responsibilities which cross administrative boundaries with Local Authorities outside of Devon. In particular, there are vital relationships with Cornwall Council, Somerset County Council, Dorset County Council and a number of the neighbouring District Councils.
- 5.2** In addition, it is important that co-operation should also extend to other organisations representing areas with functional relationships to Devon. Particular examples of such organisations would be other Local Enterprise Partnerships and other Local Nature Partnerships. As Local Enterprise Strategic Economic Plans become more formalised, the need for cross-boundary cooperation will become clearer, and the mechanisms stronger.
- 5.3** This protocol does not address the need for co-operation with Local Authorities outside of Devon as doing so would be likely to result in the protocol becoming unwieldy.
- 5.4** However, it is recognised that the principles underpinning the Duty to Co-operate are not constrained by administrative boundaries but relate to the functional relationships that exist between places. The Duty to Co-operate still requires co-operation between appropriate organisations on specific issues which may extend beyond Devon. As such, this protocol does not preclude the need for co-operation with other bodies and Local Authorities on locally specific issues and topics. Such co-operation already takes place and will continue effectively. The signatories to the protocol commit to this wider co-operation on an on-going basis.
- 5.5** The nature of possible co-operation across administrative boundaries into areas outside of Devon is shown schematically in Figure 1. This figure does not show the detail of cross-boundary co-operation with Authorities outside Devon, however it does identify the importance of additional discussions outside the remit of this protocol.



**Figure 1: Examples of co-operation outside the scope of this protocol**

## **6 Co-ordination and governance**

### **6.1 Introduction**

- 6.1.1 It is vital that the mechanisms of co-operation as identified in this protocol are administered appropriately to ensure the on-going operation of the system.
- 6.1.2 In this regard, the administration and monitoring of the effectiveness of the protocol are managed through a two- tier structure. This will ensure sufficient support for the regime to ensure it operates effectively and sustainably.

### **6.2 Strategic governance**

6.2.1 All organisations covered by this protocol will endeavour to provide representation on an Officer Steering Group as required. The Steering Group will:

- Meet at least biannually as part of the Devon Planning Officer Group (DPOG) sessions;
- Be led by a biennially agreed and rotational Chair. The Chair of DPOG will also Chair the Steering Group. As such, the Chair will be a representative from a Local Authority;
- Be supported by an Officer Steering Group Secretary appointed on a rotational, annual basis, representing the same organisation as the Chair. The Secretary of DPOG will also be secretary for the Officer Steering Group; and
- Agree matters for on-going co-operation, such as the preparation of agreed evidence on specific issues and covering specific areas.

### **6.3 Operational activities**

6.3.1 Protocol signatories will:

- Identify and respond to matters arising through plan preparation and other localised issues that will require cross-boundary co-operation;
- Where issues arise through Local Plan preparation or infrastructure delivery, endeavour to work to the timetable requirements of the organisation responsible for that area of work (the 'lead organisation');
- Present key issues and any additional position statements or Memoranda to Members or relevant senior staff (as considered appropriate) for sign-off;
- Prepare statements (of endorsement) relating to compliance with the Duty to Co-operate on specific spatial issues which may arise;
- In the case of Local Authorities, these statements should be agreed by Senior Officers and approved by appropriate Members if considered appropriate; and
- In the case of the Agencies, the Local Enterprise Partnership and Local Nature Partnerships, these statements should be agreed by appropriate members of staff and approved by senior representatives.

6.3.2 It should be noted that the protocol does not preclude any organisation from exercising its duties according to its own discretion and is not legally binding.

6.3.3 Individual organisations may also choose to report more widely in accordance with their respective constitutions or terms of reference.

6.3.4 The operational mechanisms governing this Duty to Cooperate Protocol and the content of this Protocol itself will be monitored and reviewed according to evolving circumstances. Reviews will be held at least biennially.

#### **6.4 Co-operation reporting**

6.4.1 In the case of Local Authorities, discussions held, and decisions made, at the Officer Steering group will be reported to the relevant Members of the Local Authorities. This will involve the relevant Cabinet, Executive Member or Portfolio Holder.

6.4.2 In the case of the Agencies, Local Enterprise Partnership and the Local Nature Partnerships, discussions held, and decisions made, at the Officer Steering group will be reported to the relevant senior representatives.

#### **6.5 Record keeping**

6.5.1 It is important to systematically record and retain details of any significant stages of progress on key work areas. There is a requirement for Local Authorities to account for records of compliance with the Duty to Co-operate through monitoring reports that must be published on at least an annual basis. Such reporting should cover topics and issues (as listed in Appendix C) over which there is agreement and, in particular, disagreement.

6.5.2 The Officer Steering Group Secretary will take and retain the minutes from the biannual meetings of the Officer Steering Group. Where appropriate, the minutes and records from other, less formal discussions between organisations covered by this protocol will be sent to the Officer Steering Group Secretary.



## 7 Protocol signatories

### West Devon Borough Council

In exercising strategic functions and responsibilities, in matters of plan and strategy preparation and in plan and infrastructure delivery, West Devon Borough Council will co-operate with all other signatories of this protocol. In particular, the Authority will:

- Co-operate fully with all organisations identified within Appendix B, in the preparation of the documents included in Appendix D for which the Council is responsible. The specific co-operation outcomes, and the mechanisms for achieving them with which West Devon Borough Council will engage, are included in Appendix C;
- Co-operate with all of the Local, Minerals and Waste Planning Authorities in Devon, and other relevant organisations, in the preparation of an appropriate local, minerals and waste planning policy framework, in particular regarding the consideration of planning issues which have a defined spatial element crossing administrative boundaries and authority responsibilities;
- Fully engage, and engage with, other Local Authorities and infrastructure providers in the preparation of planning policy and plan delivery to facilitate on-going specialist input, infrastructure planning and strategic guidance;
- Support other organisations in the preparation of the documents included in Appendix D;
- Proactively seek and provide input into the decision-making processes for the sourcing and allocation of infrastructure funding; and
- Have regard to statutory National Park purposes.

Signed: .....

Date: .....

Position: .....

On behalf of: .....