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## Whitby Business Park AAP - Duty to Co-operate Statement

### Summary

#### Statement on the Duty to Co-operate

#### Summary

- **This statement provides an overview on how the 'duty to co-operate' inherent within national legislation and policy has been complied with in preparing the Whitby Business Park Area Action Plan (Whitby BP AAP).**
- **Through doing so it provides evidence that the North York Moors National Park Authority and Scarborough Borough Council, in their capacity as the Local Planning Authorities, have given all bodies of relevance covered by the 'duty' an adequate opportunity to influence the Whitby BP AAP; had serious discussions on the Whitby BP AAP and its implications; and had discussions about outside implications that could affect the Whitby BP AAP.**
- **This statement of compliance on the 'duty to co-operate' should be read in conjunction with the Authorities Consultation Statement, and the background papers. These provide much of the reasoned justification for the preferred options taken forward and hence support the practical policy outcomes that have resulted from co-operation, consultation and the evidence base.**
- **Co-operation is not a 'one-off' exercise and will remain fundamental in implementing and monitoring the effectiveness of the policies within the Whitby BP AAP, in addition to bringing forward additional Local Plan documents. The extent to which the Councils continue to 'co-operate' will be reported annually within their Authority Monitoring Reports.**

# Whitby Business Park AAP - Duty to Co-operate Statement

## 1 Introduction

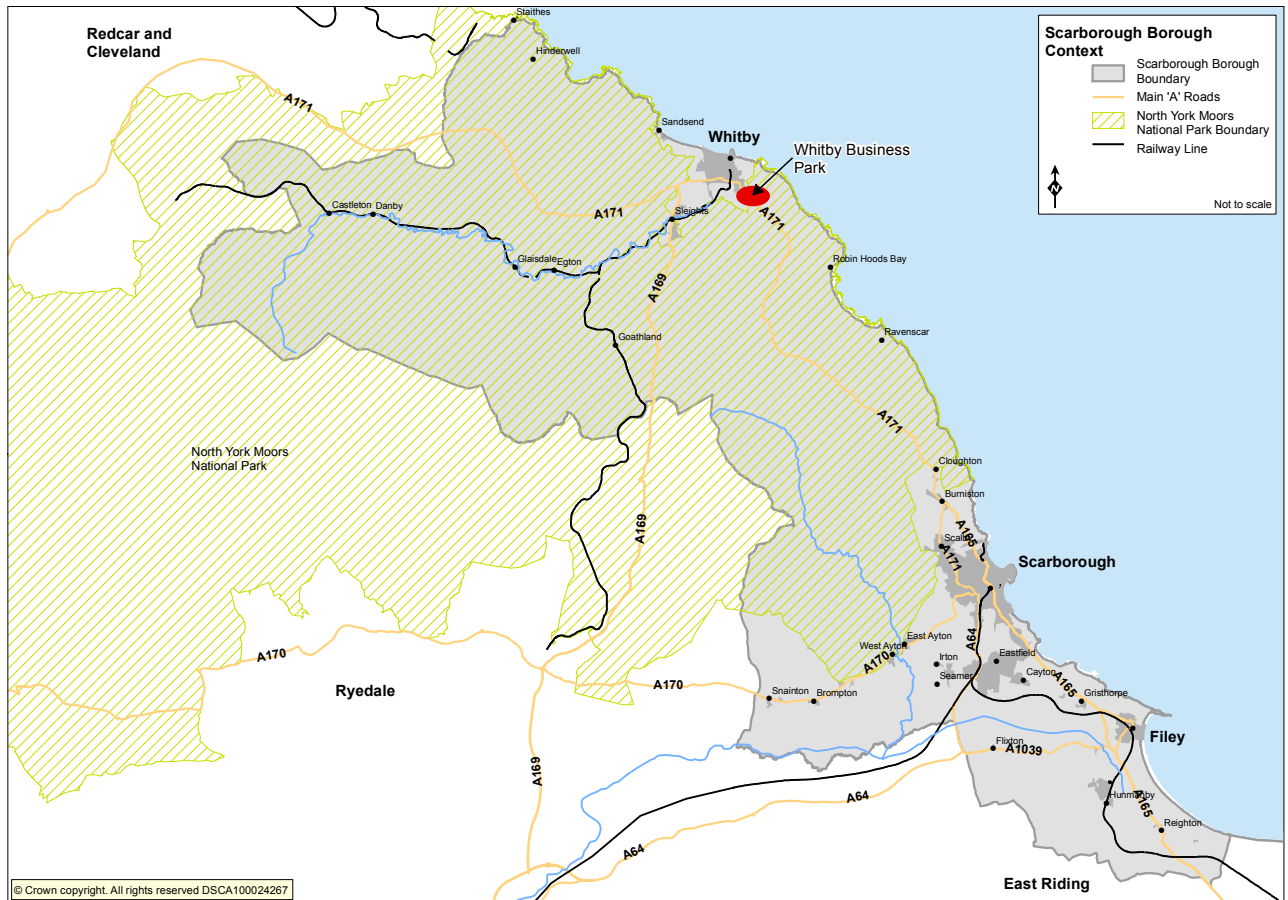
**1.1** The Localism Act received Royal Assent on 15 November 2011. It aims to shift power from central government back into the hands of individuals, communities and councils. The Localism Act introduces a 'duty to co-operate'. That requires local authorities to work with neighbouring authorities and other prescribed bodies to maximise the effectiveness of the preparation of their development plan documents and supporting activities so far as it relates to a strategic matter. Section 110 of the Localism Act inserts a new Section 33A into the Planning and Compulsory Purchase Act 2004 (see Appendix A).

**1.2** The impact of the Duty to Co-operate is to introduce a new way of working into local government and its partners. It:

- requires councils and public bodies to engage constructively, actively and on an ongoing basis in relation to planning of sustainable development
- requires councils to consider whether to enter into agreements on joint approaches or prepare joint local plans (if an LPA)
- applies to planning for strategic matters in relation to the preparation of local and Marine Plans, and other activities that prepare the way for these activities

**1.3** Local authorities neighbouring the North York Moors National Park Authority and Scarborough Borough Council are identified on Map 1.

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**Map 1 Showing Adjoining Local Authorities**

**1.4** The prescribed bodies are defined in Part 2 of the Town and Country Planning (Local Planning) (England) Regulations 2012. Those relevant to the Whitby Business Park are:

- Clinical Commissioning Group;
- Environment Agency;
- English Heritage;
- Natural England;
- Highways Agency;
- Homes and Communities Agency;
- Highway Authority;
- Local Enterprise Partnership;
- Marine Management Organisation.

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**1.5** Relevant planning policy issues to be considered under the duty to cooperate are also explained in National Planning Policy Framework (paragraphs 178 -181 and 156). Specifically it states "... the Government expects joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities" (paragraph 178). Co-operation should be a continuous process of engagement from initial thinking through to implementation and should consider cross boundary issues such as:

- homes and jobs needed in a geographical area;
- infrastructure projects;
- retail, leisure and other commercial developments;
- social infrastructure;
- climate change mitigation and adaptation (e.g. flood risk);
- landscape and the natural and historic environment.

**1.6** The outcome of the Duty to Co-operate is intended to enable the promotion of culture change and enhance the spirit of partnership working on strategic cross-boundary issues so that development requirements are more likely to be met. Significant potential benefits of Duty to Co-operate that might accrue include:

- it should act as a strong driver to change the behaviour of local authorities so that strategic leadership is strengthened;
- through the spirit of co-operation, greater potential access to the resources of other stakeholders can be achieved and by working alongside incentives (e.g. New Homes Bonus), the Duty is intended to increase the effectiveness of plans thereby giving confidence to funders and investors;
- through greater co-operation, help to reduce the costs of plan preparation through the sharing of the preparation of evidence and staff time and expertise.

**1.7** Further information on the duty to co-operate is outlined in a note published by the Planning Advisory Service available on its website

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### 2 Co-operation in the Preparation of the Area Action Plan

**2.1** This statement has been prepared to outline the principal activities undertaken by the North York Moors National Park Authority and Scarborough Borough Council in the preparation of the Whitby Business Park Area Action Plan (Whitby BP AAP). At the point that the duty to co-operate was introduced (November 2011) the Whitby BP AAP was already at an advanced stage of preparation having already produced a Discussion Paper for consultation to obtain views on what the Area Action Plan should contain and the issues it should address – August and September 2009. The decision to prepare a joint Plan was made in accordance with Section 28 of the Planning and Compulsory Purchase Act 2004 (See Appendix B).

**2.2** This statement identifies activities that have taken place before the duty was introduced and others that are on-going. It should be emphasised strongly from the outset that the North York Moors National Park Authority and Scarborough Borough Council's approach has not been confined to consultation just to meet the statutory requirements. Rather, it is one based on building meaningful and productive partnerships at the local level and ensuring that strategic solutions are reached at the appropriate scale with appropriate parties wherever these can be of benefit in the delivery of infrastructure and services to the communities. When taken together, these activities help to demonstrate how the duty to co-operate has been fulfilled in preparing the Whitby BP AAP.

**2.3** The two authorities co-operated together in:

- Governance and the co-ordination of decision-making stages;
- Project management and resourcing;
- Evidence base development including commissioning and producing evidence;
- Extensive consultation activities;
- plan preparation; and
- Preparation for testing the Plan at Examination.

**2.4** A Joint Member Working Group was established in 2009 to ensure that discussions on the Area Action Plan could take place between Members of the two authorities on a regular and informal basis. Three Members from each Authority sit on the Group with a rotating chair. The aims of the Group were agreed as follows:

1. To provide a forum at which Members from the National Park Authority and Scarborough Borough Council together can jointly discuss matters relating to Whitby Business Park and how these will be addressed through the Area Action Plan.
2. To provide a forum for discussion prior to formal consideration of matters relating to the Whitby Business Park Area Action Plan including draft documents, arrangements for consultation and consideration of comments received during consultation.

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3. To consider issues at Whitby Business Park in relation to other organisations who will be invited to attend the meetings where they have a specific area of interest or expertise relating to issues that need to be addressed eg Highway Authority, Environment Agency.
4. To ask officers to prepare notes of the joint meetings and put forward matters for decision to the relevant Committees of the respective authorities when they are considering items relating to the Area Action Plan.

**2.5** The Group has met regularly throughout the preparation of the Area Action Plan. However, formal decisions at the key stages of the preparation process have been made by the relevant Committees of Scarborough Borough Council and the National Park Authority respectively.

### 3 Co-operation with Neighbouring and Other Authorities

**3.1** As highlighted by Map 1 there are a number of local authorities bordering the Plan making authorities' areas. In terms of developing an understanding of key cross boundary issues, the authorities have been engaged in the following ways:

- Direct consultations at all stages of the plan making process;
- Duty to Co-operate meetings with the adjoining authorities;
- County-based meetings such as the North Yorkshire and York Spatial Planning Board and Officers Group; and
- Joint Meetings with the Tees Valley Local Authorities.

**3.2** No cross boundary issues have been identified and no authorities have objected to the policies and proposals in the Whitby BP AAP.

**3.3** North Yorkshire County Council welcomed the consultation and supported the employment aims and considered that the Draft Plan did not raise strategic planning issues.

### 4 Co-operation with Prescribed Bodies

#### Co-operation with Prescribed Bodies

**4.1** As described at paragraph 1.4 the prescribed bodies are defined in Part 2 of the Town and Country Planning (Local Planning) (England) Regulations 2012 with those appropriate to the Whitby Business Park context being:

- Clinical Commissioning Group;
- Environment Agency;
- English Heritage;
- Natural England;
- Highways Agency;

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- Homes and Communities Agency;
- Highway Authority;
- Local Enterprise Partnership;
- Marine Management Organisation.

**4.2** Throughout the preparation of the Whitby BP AAP there has been on-going liaison and co-operation with the nominated statutory bodies with issues being identified initially via formal liaison and the consultation process. The following paragraphs provide evidence of those prescribed bodies that had a direct influence on the plan's development and the outcome of that cooperation.

**4.3** Co-operation with the Environment Agency has been extensive, particularly in the later stages of the plan's development throughout 2013 that ultimately led to changes particularly in relation to the site guidance, the monitoring and the Sustainability Appraisal.

**4.4** Strong representations were also received from English Heritage on the Draft Plan. These were mainly concerned with the long distance views and setting of Whitby Abbey. The Plan has been amended to reflect their concerns.

**4.5** Natural England gave general support to the Draft Plan and welcomed the reference to reinforcing the green infrastructure network and enhancements for priority habitats and species.

**4.6** The Local Enterprise Partnership have worked closely with the authorities in accessing funding streams to allow delivery of the extensions to the Business Park.

## 5 Co-operation with Other Bodies

**5.1** During the consultation on the discussion paper and the draft plan various infrastructure providers were consulted including, electricity, gas, and water

**5.2** As is evidenced in the Statement of Consultation, the authorities have consulted a wide range of groups including many local voluntary and interest groups and all the businesses on the Business Park. The Authorities have been proactive in engaging with the businesses on the site throughout the preparation of the Area Action Plan and have contacted businesses individually with details of the consultations. A meeting with the Whitby Business Park Management Association took place on 2<sup>nd</sup> September 2009 hosted by Whitby Seafoods at the company's offices. Although the number of businesses represented was small, it provided very useful feedback. The meeting helped to confirm that the businesses agreed with the issues raised in the Discussion Paper but it also brought out other points about the site that needed to be addressed.

**5.3** A full list of bodies consulted during the process can be found in the Consultation Statement.



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### 6 Conclusions

**6.1** This report demonstrates the Authorities' compliance with the Duty to Co-operate in preparing the Whitby Business Park Area Action Plan (Whitby BP AAP). It provides evidence that clear engagement and co-operation has been embedded within the plan-making process as a whole, from its inception in 2009 up to the present day, including actions prior to the enactment of the Duty.

**6.2** It demonstrates how meaningful cross-boundary working has taken place, and every effort was made to engage statutory and non-statutory consultees in the plan-making process. It goes on to provide evidence of face to face meetings that have taken place, including regular planning groups, and shows that key authorities and organisations have been fully engaged in the process. The report pays particular attention to strategic matters as defined in the Localism Act, drawing out the main strategic cross-boundary issues and their outcomes.

**6.3** In practice the 'duty to co-operate' has affected the Authorities' in the following ways:

- The two authorities have worked intimately together to develop a plan suitable to support the economic growth aspirations and to develop a joint plan so that the employment land requirements of Whitby and the immediate area might be met whilst at the same time safeguarding the natural and historic environments which are central to the area's appeal.
- Working with neighbouring local authorities to identify and address strategic crossboundary issues.
- Working with the County Council to identify and address strategic issues.
- Working with other public bodies and infrastructure providers to ensure that relevant strategic planning matters are identified and addressed.
- Resulting in sufficient and effective dialogue about cross boundary issues, particularly employment and infrastructure.

**6.4** The North York Moors National Park Authority and Scarborough Borough Council consider that this report evidences that the responsibilities placed on the councils in relation to their duty to co-operate with neighbouring authorities and prescribed bodies has been fulfilled. Liaison with those authorities and bodies has been embedded within the Whitby BP AAP process from its early stages. The benefit of this close working has ensured many policies and proposals of the Whitby BP AAP were in increasing accord with these bodies' plans and programmes throughout the process, reflected by the degree of support expressed in comments at successive stages of consultation. The success of this approach should not be underestimated.

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### Appendix A Extract of Localism Act on Duty to Co-operate

#### Section 110 Duty to co-operate in relation to planning of sustainable development

1) In Part 2 of the Planning and Compulsory Purchase Act 2004 (local development) after section 33 insert—

“33A Duty to co-operate in relation to planning of sustainable development

(1) Each person who is —

(a) a local planning authority,

(b) a county council in England that is not a local planning authority, or

(c) a body, or other person, that is prescribed or of a prescribed description, must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person —

(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).

(3) The activities within this subsection are —

(a) the preparation of development plan documents,

(b) the preparation of other local development documents,

(c) the preparation of marine plans under the Marine and Coastal Access Act 2009 for the English inshore region, the English offshore region or any part of either of those regions,

(d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs (a) to (c) that are, or could be, contemplated, and

(e) activities that support activities within any of paragraphs (a) to (c), so far as relating to a strategic matter.

(4) For the purposes of subsection (3), each of the following is a “strategic matter”—

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(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) 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, and

(b) sustainable development or use of land in a two-tier area if the development or use—

(i) is a county matter, or

(ii) has or would have a significant impact on a county matter.

(5) In subsection (4) —

“county matter” has the meaning given by paragraph 1 of Schedule 1 to the principal Act (ignoring sub-paragraph 1(1)(i)),

“planning area” means —

(a) the area of —

(i) a district council (including a metropolitan district council),

(ii) a London borough council, or

(iii) a county council in England for an area for which there is no district council,

but only so far as that area is neither in a National Park nor in the Broads,

(b) a National Park,

(c) the Broads,

(d) the English inshore region, or

(e) the English offshore region, and

“two-tier area” means an area —

(a) for which there is a county council and a district council, but

(b) which is not in a National Park.

(6) The engagement required of a person by subsection (2) (a) includes, in particular —

(a) considering whether to consult on and prepare, and enter into and publish,

agreements on joint approaches to the undertaking of activities within subsection (3), and

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(b) if the person is a local planning authority, considering whether to agree under section 28 to prepare joint local development documents.

(7) A person subject to the duty under subsection (1) must have regard to any guidance given by the Secretary of State about how the duty is to be complied with.

(8) A person, or description of persons, may be prescribed for the purposes of subsection (1) (c) only if the person, or persons of that description, exercise functions for the purposes of an enactment.

(9) A person is within this subsection if the person is a body, or other person, that is prescribed or of a prescribed description.

(10) In this section —

“the English inshore region” and “the English offshore region” have the same meaning as in the Marine and Coastal Access Act 2009, and “land” includes the waters within those regions and the bed and subsoil of those waters.”

2) In section 16 of the Planning and Compulsory Purchase Act 2004 (applying Part 2 for purposes of a county council’s minerals and waste development scheme) after subsection (4) insert —

“(5) Also, subsection (3) (b) does not apply to section 33A (1) (a) and (b).”

3) In section 20(5) of the Planning and Compulsory Purchase Act 2004 (development plan documents: purpose of independent examination) after paragraph (b) insert  
“; and

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.”

## Appendix B Extract from Planning and Compulsory Purchase Act 2004

### Section 28 Joint local development documents

(1) Two or more local planning authorities may agree to prepare one or more joint local development documents.

(2) This Part applies for the purposes of any step which may be or is required to be taken

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in relation to a joint local development document as it applies for the purposes of any step which may be or is required to be taken in relation to a local development document.

(3) For the purposes of subsection (2) anything which must be done by or in relation to a local planning authority in connection with a local development document must be done by or in relation to each of the authorities mentioned in subsection (1) in connection with a joint local development document.

(4) Any requirement of this Part in relation to the RSS is a requirement in relation to the RSS for the region in which each authority mentioned in subsection (1) is situated.

(5) If the authorities mentioned in subsection (1) include one or more London boroughs the requirements of this Part in relation to the spatial development strategy also apply.

(6) Subsections (7) to (9) apply if a local planning authority withdraw from an agreement mentioned in subsection (1).

(7) Any step taken in relation to the document must be treated as a step taken by-

(a) an authority which were a party to the agreement for the purposes of any corresponding document prepared by them;

(b) two or more other authorities who were parties to the agreement for the purposes of any corresponding joint local development document.

(8) Any independent examination of a local development document to which the agreement relates must be suspended.

(9) If before the end of the period prescribed for the purposes of this subsection an authority which were a party to the agreement request the Secretary of State to do so he may direct that-

(a) the examination is resumed in relation to the corresponding document;

(b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination.

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(10) A joint local development document is a local development document prepared jointly by two or more local planning authorities.

(11) The Secretary of State may by regulations make provision as to what is a corresponding document.