

PART 5 – Protocols and Ethical Standards

4.1 The East Midlands Combined County Authority Protocol for the Exercise of Concurrent Functions and Associated Statutory Consents

Parties

1. **THE EAST MIDLANDS COMBINED COUNTY AUTHORITY**, of (“Combined County Authority”).
2. **DERBYSHIRE COUNTY COUNCIL**, of County Hall, Matlock DE4 3AG.
3. **NOTTINGHAMSHIRE COUNTY COUNCIL**, of County Hall, West Bridgford, Nottingham NG2 7QP.
4. **DERBY CITY COUNCIL**, of Council House, Corporation Street, Derby DE1 2FS.
5. **NOTTINGHAM CITY COUNCIL**, of Loxley House, Station Street, Nottingham NG2 3NG.

Each a **party** together the **parties**, and the parties (2) to (5) above collectively the “**Constituent Councils**” of the Combined County Authority.

1. Background and Introduction

- 1.1 The East Midlands Combined County Authority Regulations 2024 made on February 28 2024 (“the 2024 Regulations”) provide for:
 - the election of a mayor for the area of the Combined County Authority (“Mayor”) from May 2024,
 - the following functions to be conferred on the Combined County Authority:
 - functions of the Homes and Communities Agency (now known as Homes England) relating to housing and regeneration (to be exercised concurrently with Homes England),
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- functions in relation to the designation of a Mayoral Development Area (MDA) and establishing a Mayoral
- Development Corporation (to be exercised by the Mayor),
- functions in relation to local passenger transport services including grants to bus service operators,
- Power to pay grant (exercisable concurrently with a Minister of the Crown).
- functions in relation to Business Rates Supplements (to be exercised by the Mayor),
- functions of the Constituent Councils to be exercised concurrently by the Combined County Authority relating to:
 - housing, regeneration, and planning, and
 - transport (including in relation to highways functions: permit schemes and civil enforcement of road traffic contraventions; and in relation to local transport functions: bus ticketing schemes and concessions, and workplace parking levy licensing schemes).
 - the provision for protection or improvement of public health

Concurrent Functions

- 1.2 The tables of functions in **Part 3** to this protocol sets out each function (that is, power or duty) of the Combined County Authority (including a function exercisable by the Mayor) conferred by the 2024 Regulations. This table includes detail of whether functions are exercisable concurrently with the Constituent Councils (a “Concurrent Function”) and whether that concurrency is continuing or available for the duration of the transport transition period (“a Transitional Concurrent Function”).
- 1.3 Under the 2024 Regulations, there is:
- no transfer of any Concurrent Function to the Combined County Authority from any Constituent Council; each Constituent Council may continue to exercise any Concurrent Function in relation to its area,
 - no requirement for the joint exercise of any Concurrent Function by the Combined County Authority with Constituent Councils – that is, that they are not required to act together, and
 - no requirement for a Constituent Council to involve, consult or seek the consent of the Combined County Authority in relation to the exercise of any Concurrent Function by a Constituent Council.
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1.4 That is, each Constituent Council may continue to exercise any Concurrent Function within their area, and in the exercise of any Concurrent Function no Constituent Council is subject to any restriction or condition imposed by the 2024 Regulations.

1.5 For the duration of the Transition Period, a Transitional Concurrent Function, the statements set out at 1.3 and 1.4 are applicable. It is envisaged that the exercise of Transitional Concurrent Functions by the Combined County Authority and the Constituent Councils will be governed by an Inter-Authority Agreement which will set out the detailed position in relation to the transition of transport functions to the CCA.

Statutory Consents

1.6 The 2024 Regulations provide that the Combined County Authority's exercise of specified functions is subject to a consent provision, ("Statutory Consent"), to safeguard the Constituent Councils' role in local decision-making and delivery.

Aim of this Protocol

1.7 The aim of this protocol is to promote:

- **co-operation** and **collaboration** between the Combined County Authority and the Constituent Councils in a spirit of partnership,
- **transparency** of roles and processes to engender mutual trust and confidence, and
- the **best use of resources** through co-ordination and reducing duplication between the parties.

1.8 The Combined County Authority and Constituent Councils have agreed to follow this protocol when exercising any Concurrent Function, and in relation to any Statutory Consent.

1.9 The Combined County Authority is committed to on-going engagement with Constituent Councils about all aspects of its work. This includes engagement about how the Combined County Authority exercises its functions. Any timescales set out in this protocol therefore should be regarded as a minimum; there should be additional lead-in time in relation to the development of any projects or schemes involving the possible exercise of any Concurrent Function.

Miscellaneous

- 1.10 For the functions of the constituent councils in section 69 of the Local Democracy, Economic Development and Construction Act 2009 (Duty to prepare an assessment of economic conditions)), the 2024 Regulations provide that a Constituent Council's duty to exercise the Concurrent Function is met when the Combined County Authority carries it out. This means that provided the Combined County Authority performs the duty, the Constituent Councils will not be in breach of their statutory duty if they do not do so.
- 1.11 The 2024 Regulations provide for a Statutory Consent in relation to some functions of the Combined County Authority which are to be exercised by the Mayor, including the power to acquire land for housing development under section 17(3) of the Housing Act 1985, which is a Concurrent Function. It is intended this protocol shall extend to the Mayor once they are in office in relation to the exercise of these functions.
- 1.12 It is envisaged that in any matters relevant to a Mayoral Development Corporation or any other like body, the principles of this protocol shall be applied.
- 1.13 Where the Combined County Authority and any relevant Constituent Council reasonably consider that the nature and scale of the exercise of any Concurrent Function is of a complex, sensitive or significant nature, then the Combined County Authority and Constituent Council may agree a bespoke protocol to govern the way the Combined County Authority exercises that Concurrent Function . In particular, it is anticipated that for the purpose of concurrency of transport functions, an Inter Authority Agreement will be agreed between the Constituent Councils and the Combined County Authority to govern the use and transition of functions in the transition period.
- 1.14 This protocol does not itself constitute an arrangement for the discharge of functions made in accordance with section 101 of the Local Government Act 1972 and/or the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012. Any such arrangement may be made by separate agreement between relevant parties.
- 1.15 This protocol does not address the **scrutiny** of the Combined County Authority in relation to how it exercises any Concurrent Function, which will be subject to separate arrangements.

2. Concurrent Functions – Underlying Principles

- 2.1 This protocol sets out how the Combined County Authority and each Constituent Council intend to **work together** to secure that Concurrent Functions are exercised in the best interests of the inhabitants of their areas and for their mutual benefit. The Combined County Authority and each Constituent Council acknowledge that, by law, a Concurrent Function may be exercised by the Combined County Authority or a Constituent Council acting alone (subject to any Statutory Consent requirement).
- 2.2 The Combined County Authority will **consult** Constituent Councils about the exercise of any Concurrent Function in accordance with paragraph 3 below.
- 2.3 The Combined County Authority will exercise any Concurrent Function **reasonably** and after **taking all relevant factors or considerations into account**, including how any Constituent Council is exercising or proposes to exercise the Concurrent Function and the potential effect of a decision on any Constituent Council. In exercising any Concurrent Function, the Combined County Authority will comply with the public sector equality duty under section 149 of the Equality Act 2010.
- 2.4 The Combined County Authority will so far as reasonably practicable exercise any Concurrent Function in such a way as to be **compatible** with and **complementary** to the exercise of the Concurrent Function by any Constituent Council.
- 2.5 Subject to each party complying with requirements relating to data protection and the law of confidentiality, the Combined County Authority and each Constituent Council agree to **share any information** as reasonably requested by any other party, to facilitate their exercise or proposed exercise of any Concurrent Function.
- 2.6 The parties will consult with each other before **approving, varying, or revoking any strategy or plan** which is likely to determine or significantly affect how any Concurrent Function is exercised by the Combined County Authority or any Constituent Council.
- 2.7 The Combined County Authority will so far as reasonably practicable seek to develop and agree with each Constituent Council a common and consistent approach to any **monitoring arrangements** relating to any Concurrent Function exercised by the Combined County Authority.
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2.8 The Combined County Authority will so far as reasonably practicable seek to develop and share **best practice** with each Constituent Council in relation to the exercise of any Concurrent Function exercised by the Combined County Authority.

2.9 It is anticipated that the areas in which it is anticipated that the Combined County Authority will exercise concurrent functions will be identified early as part of the Annual Plan. This will enable early engagement and discussion with the Constituent Councils before the formal consultation stage under this protocol.

3. Concurrent Functions: Consultation with Constituent Councils

3.1 The Combined County Authority will consult the Constituent Councils about any proposal by the Combined County Authority to exercise any Concurrent Function, except where the Constituent Councils have agreed that no consultation is required.

3.2 The Chief Executive will also notify the relevant Chief Executive (or their nominee) of any proposal to exercise a Concurrent Function which would require a Key Decision by the Combined County Authority as soon as practicable, and in any event before any Key Decision notice is published by the Combined County Authority in relation to exercising the Concurrent Function, and unless the Chief Executive (or their nominee) agrees that no consultation is required, the Combined County Authority will then proceed to consult the relevant Constituent Council in the manner set out in 3.3 and 3.4 below about such proposal.

3.3 The Chief Executive will consult the Chief Executive (or their nominee) of any relevant Constituent Council as soon as reasonably practicable about the proposed exercise of any Concurrent Function, including the commencement date/projected timescales and the manner in which it is to be exercised

3.4 Such consultation must be fair and carried out with adequate notice for responses which must be conscientiously considered by the Combined County Authority with a view to reaching agreement on the exercise of the Concurrent Function.

4. Statutory Consents: Procedure

4.1 There are two ways in which the 2024 Regulations require consent relating to the constituent councils. These are either:

- The consent of the lead member of a Constituent council, or
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- The consent of the constituent council

- 4.2 The 2024 Regulations also provide for circumstances in which the consent of a district or borough council or the Peak District National Park Authority are required.
- 4.3 The 2024 Regulations provide for any **Statutory Consent** of lead members **to be given at a meeting of the Combined County Authority**. The request for any consent will therefore be set out in a report to be considered at a meeting of a Combined County Authority, and any consent will be duly recorded in the minutes of the meeting.
- 4.4 Where Statutory Consent is required from a constituent council, the Combined County Authority will seek that Statutory Consent **in a timely way**. To facilitate this, and to promote transparency, a notice of the request for Statutory Consent (Statutory Consent Request Notice) should be published on the Combined County Authority's Forward Plan at least 28 clear days before the Combined County Authority meeting at which it is sought, subject to this requirement being waived in exceptional circumstances by any relevant Chief Executive.
- 4.5 To further facilitate the appropriate and timely briefing by the Chief Executive (or their nominee) of the member of the Combined County Authority who may provide a Statutory Consent, the Combined County Authority's Chief Executive will **notify the Chief Executive** of each relevant Constituent Council (or their nominee) as soon as reasonably practicable of any proposal to seek a Statutory Consent, and at the latest when the Statutory Consent Request Notice is published. The Combined County Authority will provide the Chief Executive with details about the proposed exercise of the function, including the commencement date/projected timescales and the manner in which it is to be exercised.
- 4.6 In relation to any transport-related function in respect of which a Statutory Consent is required, the Combined County Authority agrees that this is subject to the Combined County Authority and the Constituent Councils agreeing a **Key Route Network** in respect of which the function is to be exercised.
- 4.7 Where Statutory Consent is required from a district or borough council or the Peak District National Park, the Combined County Authority will seek that Statutory Consent in a timely way. To facilitate this, the Combined County Authority will engage as soon as possible with the relevant council. A notice of the request for Statutory Consent (Statutory Consent Request Notice) should be published on the Combined County Authority's Forward Plan at least 28 clear days before the Combined County Authority meeting at which it is sought,
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subject to this requirement being waived in exceptional circumstances by any relevant Chief Executive.

- 4.8 To further facilitate the appropriate and timely briefing by the Chief Executive (or their nominee) of the Council who may provide a Statutory Consent, the Combined County Authority's Chief Executive will notify the Chief Executive of the relevant Council as soon as reasonably practicable of any proposal to seek a Statutory Consent, and at the latest when the Statutory Consent Request Notice is published. The Combined County Authority will provide the Chief Executive with details about the proposed exercise of the function, including the commencement date/projected timescales and the manner in which it is to be exercised.

5. Dispute Resolution

- 5.1 The Combined County Authority and the Constituent Councils will act at all times in a constructive spirit of mutual cooperation and partnership to resolve disagreements.
- 5.2 Any dispute between the Combined County Authority and any Constituent Council about the exercise of a Concurrent Function (whether before or after its exercise) will be referred to the Chief Executive of the Combined County Authority and the Chief Executive of the relevant Constituent Council with a view to resolution.
- 5.3 In default of successful resolution between the parties, any dispute will be referred to the Mayor of the Combined County Authority and the Leader of any relevant Constituent Council for resolution, provided always that notwithstanding any recommendations made, any Statutory Consent of any Constituent Council will continue to be required in their absolute discretion.

6. Review

The Combined County Authority and the Constituent Councils agree to review this protocol **annually**, and before any additional concurrent functions which may be conferred on the Combined County Authority in the future by any other Regulations which are exercisable by the Combined County Authority.

The Combined County Authority and the Constituent Councils may revise this protocol from time to time, provided such **revisions** are **agreed in writing** by the Chief Executive of the Combined County Authority and the Chief Executive of each Constituent Council.

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