

**M4. Does the duty to cooperate set out in section 33A of the Planning and Compulsory Purchase Act 2004 apply to the Mayor's preparation of the Plan?**

4.1 Please see the Mayor's response to the Preliminary Question 7 (Appendix).

## Appendix

### **PQ7. Having regard to the findings of the Inspector in 2014 regarding the Further Alterations to the London Plan, does the Mayor consider that the duty to cooperate set out in section 33A of the *Planning and Compulsory Purchase Act 2004* applied to the preparation of the London Plan?**

1. No. The Mayor believes that the duty to co-operate (DtC) does not apply to the preparation of the draft London Plan.
2. The DtC was introduced through section 110 of the Localism Act 2011, which added a new section 33A to the Planning and Compulsory Purchase Act 2004. The duty applies to specified categories of organisations and/or people in respect of particular strategic planning activities.
3. There are three specified categories of organisations and people that the duty applies to: a local planning authority; an English county council which is not a local planning authority; and a body, or other person, that is 'prescribed' or of a 'prescribed description'. The Mayor of London is a 'prescribed person' for these purposes – a designation made by the Town and Country Planning (Local Planning) (England) Regulations 2012.
4. The planning activities covered by the DtC are:
  - the preparation of local development plan documents (LPDs);
  - the preparation of other development plan documents (DPDs);
  - the preparation of marine plans;
  - activities that can reasonably be considered to prepare the way for the above activities; and
  - activities that support activities in the first three of these categories, insofar as they deal with 'strategic matters' – defined as sustainable development or use of land that has or would have a significant impact on at least two planning areas, and including in particular strategic infrastructure that has or would have a significant impact on at least two planning areas.
5. The London Plan, the Mayor's spatial development strategy, is part of the development plan relating to London, but is not itself a DPD. Section 38 (2) of the Planning and Compulsory Purchase Act 2004 defines the development plan of any area in London as the spatial development strategy and DPDs which have been adopted or approved in relation to that area.
6. Two alterations to the London Plan examined since the Duty to Cooperate was introduced in 2011 have considered the issue of Duty to Cooperate: the 2013 Revised Early Minor Alterations to the London Plan (EiP 2012) and the 2015 Further Alterations to the London Plan (EiP 2014). The Inspectors examining those alterations have reached differing conclusions on whether the Duty to Co-operate applies:

7. The Inspector considering the 2013 Revised Early Minor Alterations to the Plan concluded that the DtC does not apply to the preparation of the London Plan, observing in paragraph 6 that:

*“The Mayor is a prescribed person for the purposes of the duty but the London Plan is in effect a regional strategy (RS), the preparation of which does not fall within the list of activities covered by the duty, such as preparation of Development Plan Documents (DPDs). Activities that can reasonably be described as preparing the way for activities such as DPD preparation fall within the duty. However, I do not agree with the South East Waste Planning Advisory Group and the East of England Waste Technical Advisory Body that the LP can be considered to meet this definition, since its production is an activity in its own right<sup>1</sup>.”*

8. In contrast, the 2014 FALP inspector concluded that the duty to cooperate does apply, on the grounds (para 7) that:

*“The preparation of the FALP is an activity in its own right but it must, in my view, also prepare the way for and support the preparation of development plan documents”<sup>2</sup>.*

9. However, in paragraph 12 he went on to say:

*“Under Section 20(7)(C) of the 2004 Act it is not possible to rectify a failure to meet the duty to co-operate and if the duty has not been met, a development plan document cannot be found to be sound. However, as has already been established, the FALP is not a development plan document nor is the GLA a local planning authority. In a strict legal sense, therefore, the failure of the Mayor to comply with the duty does not automatically mean that the FALP cannot be found to be sound.”*

10. It is the Mayor’s view that 2013 Inspector was correct, and that the London Plan is a planning activity in its own right. While the Plan will inform the development of development plan documents it cannot be described as an activity that ‘prepares the way’ for an LPD or DPD, nor is it a ‘supporting activity’ for other planning documents.

11. The FALP inspector argued that the London Plan prepares the way for Local Plans, as they must be in general conformity with the London Plan. However, while local plans do have to be in general conformity with the London Plan, the existence of the London Plan

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<sup>1</sup> Report on the Examination into the Revised early Minor Alterations to the London Plan, Geoff Salter, June 2013 <https://www.london.gov.uk/what-we-do/planning/london-plan/past-versions-and-alterations-london-plan/revised-early-minor>

<sup>2</sup> Report on the Examination in Public into the Further Alterations to the London Plan, Mr A Thickett, 18 November 2014 <https://www.london.gov.uk/what-we-do/planning/london-plan/past-versions-and-alterations-london-plan/further-alterations-london>

is not a pre-requisite for a local development plan document. If no London Plan existed, borough Local Plans could still come forward.

12. Similarly, the SHMA and SHLAA are both important pieces of work that are key evidence bases for the London Plan. They do inform the development of local plans, but they do not prepare the way for them, nor are they supporting activities for those local plans. They are documents that are prepared primarily to support the London Plan, which is a planning activity in its own right.
13. In considering the two conflicting views, it is worth noting why the duty to cooperate was introduced. The 2011 Act saw the removal of the regional tier of Government and the abolition of Regional Spatial Strategies (RSSs) across England. The Duty to Cooperate was introduced to address the gap left by the loss of the Regional Level and the RSSs in the rest of England. However, in London the SDS remained in place, as did regional governance. The 2011 Act did not change this, nor did it create any 'gap' in London which needed to be filled by extending the DtC to the London Plan. If it had been Parliament's intention that the duty to cooperate would apply to the SDS, then the preparation of the SDS would be included in 33A (3) and the Mayor of London in Section 20 of the 2004 Act.
14. It is also important to note that while the FALP inspector concluded the DtC did apply, he was clear that the London Plan is not a development plan document and thus failure to comply with the DtC does not automatically render the plan unsound. In the Mayor's view, this supports the 2013 Inspector's conclusion that the DtC does not apply. If the Mayor were subject to the DtC, sanctions for non-compliance ought also to apply but, as the FALP Inspector accepted, there is no sanction for a failure to comply with that duty.
15. Although it does not apply to the preparation of the London Plan, the legislation is clear that the Mayor is bound by the DtC with regard to the preparation of other authorities' plans – including those of the London boroughs and of authorities neighbouring London (and they are required to co-operate with the Mayor in this regard). Alongside this requirement, London boroughs' plans must be in general conformity with the London Plan (Planning and Compulsory Purchase Act 2004 S.24(4)a).
16. Irrespective of whether, as a matter of law, the Duty to Cooperate extends to the preparation of the London Plan, the preparation of the Plan has included constructive and ongoing engagement with a range of stakeholders, including London Boroughs and the prescribed bodies.
17. The main statutory requirements for the preparation of the Plan are set out within sections 334 to 343 of the Greater London Authority Act 1999 (as amended). The requirements for publicity and consultation are provided in the Town and Country Planning (London Spatial Development Strategy) Regulations 2000. Under these provisions, the Mayor has duties to:

- consult on the London Plan with counties/districts adjoining London (GLA Act section 335).
- inform local planning authorities in the vicinity of London of his views concerning any matters of common interest relating to the planning or development of London or those areas (GLA Act sections 339 and 348).

18. In addition, with regard to areas beyond London's boundaries, Planning Practice Guidance paragraph 7<sup>3</sup> states 'cooperation between the Mayor, boroughs and local planning authorities bordering London will be vital to ensure that important strategic issues, such as housing delivery and economic growth, are planned effectively'. This statement is supported by the Mayor and the work carried out for the development of the Plan demonstrates the commitment to this approach. See response to PQ8, PQ9 and PQ12 for more detail on how the Mayor has engaged with stakeholders, and the consultation that has taken place.

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<sup>3</sup> <https://www.gov.uk/guidance/duty-to-cooperate> - 007 Reference ID: 9-007-20140306