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Your ref: Wealden Local Plan Reg 19

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

LDF Planning Policy
Wealden District Council

BY EMAIL ONLY

Dear Sir or Madam

Wealden Local Plan – Proposed Submission Document (Regulation 19)

Thank you for your consultation email received on 10th August regarding the Wealden Local Plan proposed submission document. We have reviewed the Local Plan together with its Habitats Regulations Assessment (HRA) and Sustainability Appraisal (SA). As well as providing our comments on the local plan policies and site allocations below, we have provided an overarching summary of our statutory advice on the HRA and SA. More detailed comments on the HRA are included within Annex 1, and our detailed advice on site allocations and their site-specific policies are provided in Annex 2.

The importance of the environment to the district is demonstrated through the plan's recognition of Wealden's beautiful and tranquil countryside, special landscapes and nationally and internationally important wildlife sites. Natural England welcomes therefore the statement in the vision for the local plan that '*The environment of the District will have been protected and biodiversity enhanced*.'

Wealden was the first district in the country to undertake a full revision of the Ancient Woodland Inventory to include smaller woodland sites, and we recognise and welcome the council's ongoing commitment to its rich and varied habitats and wildlife. This commitment is further underlined by the council's recognition of the importance of net gain and the local plan's aim to '*actively seek opportunities to increase biodiversity within the District.*'

We also note the council's commitment in the vision to protecting the sensitive habitats of Ashdown Forest and Pevensey Levels, and we have worked closely with Wealden to advise how these and other wildlife sites can be fully considered in the plan process. In particular, we recognise and welcome the council's commitment to ensuring there is a robust package of measures in place to protect the Forest from visitor pressure.

However, Natural England does have strong concerns regarding the allocation of major development within the High Weald Area of Outstanding Natural Beauty, and we have provided specific comments regarding the proposed allocation of land at Ghyll Road, Heathfield. We consider such a proposal runs contrary to the council's aim to only permit development that conserves and seeks to enhance this nationally important landscape.

We remain, however, committed to working closely with the council to help ensure that a sound plan is secured that enables growth in accordance with the principles of sustainable development.

Habitats Regulations Assessment (HRA) – Overarching summary

Air Quality – All sites

Natural England is satisfied that it **can** be ascertained that the plan or project **will not** adversely affect the integrity of Ashdown Forest Special Area of Conservation (SAC), Lewes Downs SAC and Pevensey Levels SAC and Ramsar from air quality impacts. Natural England's advice regarding air quality is that this conclusion can be reached without mitigation measures being needed under the specific requirements of the Habitats Regulations. Our advice is based on the evidence provided, our expert knowledge of the particular characteristics, interest features and management of the designated sites in question and our professional judgement.

Natural England is satisfied that it **can** be ascertained that the plan or project **will not** adversely affect the integrity of Ashdown Forest Special Area of Conservation (SAC), Lewes Downs SAC and Pevensey Levels SAC and Ramsar from air quality impacts. Natural England's advice regarding air quality is that this conclusion can be reached without mitigation measures being needed under the specific requirements of the Habitats Regulations. This is based on the evidence provided, our expert knowledge of the particular characteristics, interest features and management of the designated sites in question, and our professional judgement.

We note WDC's conclusion that there will not be an adverse effect on the integrity of these sites, provided that mitigation measures are secured. Whilst we have reviewed the evidence specifically relating to WDC's local plan, our advice, that mitigation measures are not necessary to avoid an adverse effect, is consistent with our advice to WDC's neighbouring authorities[1] in their plan making.

We recognise that it is a matter for WDC as competent authority to reach its conclusion on the Appropriate Assessments, having considered the advice provided by Natural England. If WDC decides to depart from our advice and considers that mitigation is required, it will be necessary for the council to demonstrate that the mitigation will be effective and there is sufficient certainty as to its delivery.

We have provided advice on these measures in the context that we do not consider they are required to reach a conclusion of no adverse effect on the European sites. It is our considered opinion that the mitigation measures, as proposed by WDC, do not provide the level of certainty that would be required under the Habitats Regulations. If the measures were needed, the impacts that WDC have identified would need to be negated or reduced to an acceptable level.

Natural England welcomes any measures that will contribute to reducing background nitrogen loads to designated sites. However, as stated above, our advice is that these measures are not necessary to meet the requirements of the Habitats Regulations. Such actions would however be welcome as an element of a future Shared Nitrogen Action Plan (SNAP). We welcome WDC's commitment to working with Natural England and other stakeholders in developing locally targeted measures through the SNAP that can address all sources of atmospheric nitrogen pollution at a site level.

Recreational Pressure – Ashdown Forest

Natural England is satisfied that It **can** be ascertained that the plan or project **will not** adversely affect the integrity of Ashdown Forest SAC and Special Protection Area (SPA), from recreational pressure subject to appropriate mitigation measures as identified in Policy EA 2.

Water Quality – Pevensey Levels

Natural England is satisfied that It **can** be ascertained that the plan or project **will not** adversely affect the integrity of Pevensey Levels SAC and Ramsar from water quality subject to appropriate SuDS as identified in Policy SWGA 7.

Further detailed comments relating to the specific impact pathways on the relevant designated sites are included in Annex 1.

[1] Specifically Lewes District Council, the South Downs National Park Authority, Tunbridge Wells Borough Council, Hastings Borough Council, and Rother District Council

Wealden Local Plan

Please note that we have not provided comments on all policies but those which have most influence on environmental issues. Our comments below provide advice on where policy wording could be strengthened to ensure stronger consistency with the NPPF and appropriate cohesiveness between similar policies.

Spatial Objective 7: Natural Environment

Spatial Objective 7 could be strengthened via the following edits :

- …protect and enhance designated sites
- …and will ensure measurable net gains in biodiversity …
- We will protect the dark night skies…

Spatial Objective 8: Built Environment

This objective presents an opportunity to promote provision of new green infrastructure and biodiversity net gain through development, with links to existing green infrastructure networks and provision of access and recreation opportunities. This will positively contribute to a desirable built environment, particularly with regards to human health and wellbeing and the wider environment.

Spatial Objective 9: Accessibility

Transport infrastructure (particularly new transport routes such as roads and cycle routes) can provide for wildlife and present valuable Green Infrastructure (GI) opportunities. For example, highway verges and embankments (e.g. alongside railway lines) can be important habitats in their own right, but also provide valuable connecting habitat, contributing to the overall coherence of the ecological network. We would expect this objective to acknowledge such benefits and seek opportunities to include GI provision, in addition to appropriate mitigation of environmental impacts.

Similarly, this objective should aim to make reference to wider accessibility opportunities, connecting people to nature though the provision of GI, together with improving access to new and/or existing greenspace.

As also noted below under SWGA 4, details of an offline solution to the A27 are not yet fully available as consideration is at an early stage. However, Natural England is likely to have strong concerns regarding an offline solution, particularly with regard to the potential impacts on the South Downs National Park. As any potential scheme will be likely to have significant impacts on the environment and as the timescale is likely to fall outside of the Local Plan period, it does not appear to be appropriate to include a Spatial Objective to support these proposals.

Spatial Objective 14 Climate Change and Flood Risk

Spatial Objective 14 could be strengthened via the following edit:

- The design of development will seek to avoid the exacerbation of climate change and adapt to the consequences that climate change provides.

Section 5: Air Quality and the Environment

This is a particularly complex issue that has also been covered comprehensively in the HRA. Our summary is provided above and further detailed comments on this issue may be found in relation to the HRA in Annex 1. Where issues relating to air quality are noted in a number of other sections and policies within the plan, our comments will be relevant to those sections.

Policy EA 1: Biodiversity

Natural England considers this policy to be a significant part of the local plan. An important point is that the plan needs to specifically and clearly aim for **measurable net gains for nature**. Both the

NPPF and the Defra 25 Year Environment Plan seek to embed an 'environmental net gain' principle for development, including housing and infrastructure.

Paragraph 8.8 of the supporting text acknowledges that the NPPF seeks net gain in biodiversity, however this is not reflected in the policy wording. As such, we recommend that this policy reads:

- "Development proposals should result in a measurable net gain of biodiversity…"

In addition Defra's 25 Year Environment Plan aims to develop a Nature Recovery Network to protect and restore wildlife. We suggest that the inclusion of the following would show the Plan's support for this national target:

- "Regards must be had to priority habitats and species to contribute to national and local biodiversity targets *including the development of a Nature Recovery Network (NRN)."*

To further strengthen Policy EA 1 we recommend that the following edits be made:

- (p86) …and should create and manage new habitats ~~where appropriate~~;
- (p86) New development will be supported which retains and ~~/ or~~ enhances significant features of…;
- (p87) All developments should enable and ~~not reduce~~ *improve* species' ability to move through…;
- (p88) Development that will lead to the loss of ancient woodland will not be supported, and ~~where relevant~~ the provision of *at least a* 15 metre buffer…; and
- (p88) (d) Development identified within the Plan must achieve a net gain in biodiversity and ~~where possible~~ any biodiversity corridors and stepping stones should be protected retained and ~~where appropriate~~ suitably buffered…

We advise that an opportunity has been missed within Policy EA 1 to link to Policy EA 3 on Green Infrastructure. We recommend that the policy provides direct reference to Policy EA 3 in clear support of the importance of, and requirement for, a robust GI network.

We have concerns that section d) of Policy EA 1 does not support the wider aims of the policy to secure net gains in biodiversity and provide robust GI provision. Plan policy should include clear guidelines on when it would be deemed necessary or acceptable to build on existing wildlife corridors and stepping stones. Wildlife corridors and stepping stones should be incorporated into Wealden's Green Infrastructure Strategy Supplementary Planning Document (SPD) and opportunities should be sought to create, maintain and enhance resilient and coherent ecological networks across the district.

Targets:
We recommend that at least one target for Policy EA 1 makes reference to Green Infrastructure.
Indicators:
To reflect our suggestion above, the amount of new Green Infrastructure in Wealden could be used as an indicator of success.

<u>Policy EA 3: Green Infrastructure</u>

Natural England welcomes this policy and we would be happy to work closely with the Council to further develop the Green Infrastructure (GI) SPD.

Policy EA 3 could make reference to working with partners to identify, plan, deliver, enhance and manage GI in a strategic way through the GI SPD. The GI SPD should seek to link up with neighbouring, regional and national strategies to create a coherent ecological network at a landscape scale.

We recommend the use of the Accessible Natural Greenspace Standard (ANGSt) as a useful tool that can help ensure adequate provision of accessible natural greenspace.

We recommend the following additions to the list of expectations from GI as part of developments

(p97):

- Demonstrates a range of types of GI including trees, hedges, habitats, wildlife corridors, green roofs etc.;
- Has safe and convenient access for people of all abilities;
- Contributes to both physical and mental health initiatives
- Provides a range of ecosystem services including the absorption of air pollution;

We advise that reference is made to the fact that formal sporting facilities should not be considered as GI as they may not be compatible with other users or wildlife, as habitats may be disturbed by the activity.

In addition, developers should be encouraged to take GI into account at the beginning of the development process and that it is given high regard.

We recommend that the following edits be made to "proposals will be supported where" (p97) to strengthen Policy EA 3:

- (b) …through the provision ~~or~~ *and* enhancement of…
- (c) Development provides new Green Infrastructure*,* ~~and / or~~ introduces multi-functional use of existing green spaces ~~or~~ *and* links corridors where opportunities are identified
- *(d) Development includes details of ongoing management and maintenance of Green Infrastructure Assets in perpetuity.*

In addition, it should be clarified that all four points (a)-(d) need to be provided together to secure positive GI outcomes. As currently written, it could be proposed that meeting the requirements of a single element of this section would be sufficient to satisfy Policy EA 3, which should not be the case.

We recommend that in order to provide clarity on what is required in the event of GI being lost as a result of development the following wording "unless replacement provision or suitable alternative provision can be made that contributes positively to the green infrastructure network" should be linked with the final paragraph on p97 to highlight the requirement for net gain. In addition, like for like compensation should be specified.

The final paragraph on p97 appears to describe net gains in GI provision, however we advise that the wording of this paragraph is amended to provide clarity as to its scope and aims.

Developer contributions should feed into strategic GI planning to avoid isolated areas of GI and areas with no GI. We advise that monitoring and evaluation mechanisms for GI and habitat creation are explored.

Further comments on the wider interconnected issues for the South Wealden Growth Area that include green infrastructure and green space deficiency may be found in Annex 2

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<u>Policy EA 4: Wealden's Landscape Character</u>

Development proposals should include submission of sufficient information to allow the Council to assess impacts to landscape character. Drawing on the 'Guidelines for Landscape and Visual Impact Assessment' (GLVIA 3rd edition) where appropriate.

<u>Policy EA 5: High Weald Area of Outstanding Natural Beauty (AONB)</u>

We draw the Council's attention to our comments, below, regarding Policy RUGA 2 (Land South West of Ghyll Road).

We consider Policy EA 5 would be strengthened by reference to the special qualities of the AONB as well as the 'exceptional circumstances' test set out in the NPPF for major development. We also

recommend deletion of reference to the proposals map, as this may cause confusion over whether the Policy applies to windfall development proposals that may come forward. We suggest the following changes to the wording in the first paragraph:

> *Major development within the High Weald Area of Outstanding Natural Beauty (AONB) will only be permitted if there are exceptional circumstances, as defined by national planning policy. Any proposed* development within or affecting the setting of the *AONB* ~~as defined on the proposals map,~~ will only be permitted if it conserves and seeks to enhance *the AONB's special qualities* ~~natural beauty~~, having regard to the character of the landscape including potential impacts on its character components and its functions as set out in the High Weald AONB Management Plan. Development should also not detract from the visual qualities and essential characteristics including views into and out of the AONB in relation to its location, siting or design.

In addition, we recommend that the following requirements are also necessary for development within the AONB:

- Have full regard for and meet the aims of the High Weald AONB Management Plan; and

Development proposals should include submission of sufficient information to allow the Council to assess impacts to the High Weald AONB. Where appropriate development proposals should be informed by a Landscape and Visual Impact Assessment (LVIA) in line with the 'Guidelines for Landscape and Visual Impact Assessment' (GLVIA 3rd edition).

The target to achieve no deterioration of the Landscape Character of the High Weald AONB could be monitored though LVIAs.

<u>Policy EA 6: Setting of the South Downs National Park</u>

To further strengthen Policy EA 6 we recommend that the following addition is included

Development proposals should include submission of sufficient information to allow the Council to assess impacts to the South Downs National Park. Where appropriate development proposals should be informed by a Landscape and Visual Impact Assessment (LVIA) in line with the 'Guidelines for Landscape and Visual Impact Assessment' (GLVIA 3rd edition).

<u>Policy WLP 10: Brownfield Land</u>

Brownfield Land: Paragraph 6.30 states that the Council holds a register of suitable brownfield land. It should be recognised that brownfield land can also be environmentally sensitive with a significant biodiversity interest dependent on previous use and length of time the area has been disused. It is welcomed that the policy notes that support for development on suitable brownfield land will be subject to appropriate environmental protection.

<u>Policy INF 3: Transport Infrastructure</u>

Transport infrastructure (particularly new transport routes such as roads and cycle routes) can provide for wildlife and present valuable Green Infrastructure (GI) opportunities. For example, highway verges and embankments (e.g. alongside railway lines) can be important habitats in their own right, but also provide valuable connecting habitat, contributing to the overall coherence of the ecological network. We recommend that this policy acknowledges such benefits and seeks opportunities to include GI provision, in addition to appropriate mitigation of environmental impacts.

<u>Policy INF 5: Safeguarding of infrastructure</u>

This policy is welcomed and supported to safeguard the potential future extension to Arlington Reservoir.

Policy EA 2: Ashdown Forest Special Protection Area

We welcome this policy that ensures that mitigation is in place and secured to avoid impacts on Ashdown Forest SPA and SAC from recreational impacts. The policy reflects the strong commitment that Wealden has shown to working with adjacent authorities on this issue and mirrors the approach that is in place within the local plans of other relevant authorities. Natural England confirms that the strategy proposed is the most appropriate based on the evidence base. We recommend a minor word amendment to avoid confusion with wording elsewhere in the policy that relates to development within 400. The suggested correction is below:

"Proposals for a net increase in residential development or other accommodation ~~within~~ ***between*** *400m and 7 kilometres from the Ashdown Forest SPA…."*

Additionally the Policy should also refer to Ashdown Forest SAC in the policy description as development within 400m has the potential to directly impact on the SAC features.

Policy SWGA 4: A27 improvements between Lewes and Polegate

Details of an offline solution to the A27 are not yet fully available as consideration is at an early stage. However, Natural England is likely to have strong concerns regarding an offline solution, particularly with regard to the potential impacts on the South Downs National Park. As any potential scheme will be likely to fall outside of the Local Plan period, it does not appear to be appropriate to include a policy within this Plan that supports these proposals.

Policy SWGA 7: Protection of Pevensey Levels SAC and Ramsar site - Hydrology

Natural England welcomes Policy SWGA7, which ensures no adverse effect on the integrity of the designated site. However, we would further advise that a SuDS policy needs to specifically address the quality and availability targets laid out in our advice note to the Council of September 2017. It should be noted that it may not be possible to achieve the scale and nature of SUDS required on a site-by-site basis, so this will need to be considered at project level through appropriate assessments.

Long term management of SUDS is essential and avenues to ensure this could be explored. We support a strategic approach, with strategic-scale SuDS - this would also address additional concerns such as open space access and green infrastructure provision. We therefore welcome the hook within the policy and the opportunity it presents for Natural England to work with Wealden and other relevant authorities to develop this approach.

Please also note our comments in Annex 2 regarding the relevance of this policy and the wider implications to the South Wealden Growth Area

Policy NE 3: Light Pollution

This policy is welcomed, particularly with regard to the South Downs National Park International Dark Sky Reserve and the other sites noted.

Site Allocations

Natural England is concerned that a number of site allocations are located within the High Weald Area of Outstanding Natural Beauty (AONB). We are disappointed not to have been consulted at an earlier stage on the local plan allocations as we would have welcomed the opportunity to discuss any concerns before this consultation period.

The following comments apply to all allocations within the High Weald AONB:

- Allocations within the AONB must protect and enhance the character of the AONB, in accordance with WDC's Local Plan Policies, the High Weald AONB Management Plan,

National Character Areas and Local Character Areas.

- All allocations within the AONB have the potential to negatively impact upon the designated landscape. As such, Natural England recommends that full consideration must be given to testing whether alternative locations outside of the AONB are available in preference to development within this nationally important landscape.

- Wealden District Council is responsible for determining if allocations constitute major development, in line with paragraphs 172 of the NPPF. Through the local plan, the Council must ensure that all allocations for major development within the AONB are robustly assessed against the three tests, including if there are alternatives to meet housing requirements.

- Natural England advises that AONBs should not be considered as suitable locations for major development. We have provided specific comments regarding allocation HEA2 – Land at Ghyll Road Heathfield (Policy RUGA2), as in our opinion this proposal represents major development within an AONB.

- Please note that absence of direct reference to major development for other proposed allocations in the AONB does not mean that we have no concerns. At this stage we cannot be sure whether the expected yield of each allocation would or would not be considered major development. This is a matter for the Council to consider.
- Development proposals should be informed by a Landscape and Visual Impact Assessment (LVIA) in line with the Guidelines for Landscape and Visual Impact Assessment (GLVIA 3rd edition).

<u>HEA2 – Land South West of Ghyll Road Heathfield (Policy RUGA2)</u>

We have particular concerns regarding this proposed allocation, which we consider to be major development within the AONB. As the proposal involves direct loss of AONB land to development, we do not consider it is possible to mitigate the impacts of this proposed allocation.

Natural England does not consider that the AONB, as a nationally important landscape, is a suitable location for major development. The National Planning Policy Framework (para. 172) states that '*Great weight should be given to conserving and enhancing landscape and scenic beauty in… Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues.*' Paragraph 172 further states that '*planning permission should be refused for major development other than in exceptional circumstances'*.

Whilst the NPPF sets out three tests for the consideration of major development within AONBs, we consider that the uncertainty of whether this allocation would meet these exceptional circumstances means that the plan should not rely on this allocation.

The proposal is also in our opinion contrary to Local Plan Policy EA 5 which states: '*Development within or affecting the setting of the High Weald Area of Outstanding Natural Beauty (AONB), as defined on the proposals map, will only be permitted if it conserves and seeks to enhance natural beauty...Such development should be small scale*.'

Our view is further supported by the supporting text for policy EA 5 which states that '*the siting of major development in AONBs would be inconsistent with the aims of the designation*.' In this regard, we do not agree with the council's assessment that this site (as one of the specific sites for which development is allocated), has been assessed '*as suitable to accommodate growth taking into account the AONB designation and its purpose*.'

Natural England therefore **objects** to this allocation and recommends that it is deleted to avoid the plan being considered unsound.

Further, more detailed comments on the site allocations are provided in Annex 2.

Sustainability Appraisal (SA)

The background documents are very extensive. We have therefore concentrated our efforts on the most relevant aspects of these documents to Natural England's role as a statutory consultee.

We are satisfied that the SA suitably and robustly assesses approaches to recreational pressure and alternative mitigation measures for Ashdown Forest and we fully support the identified Policy approach.

Table 104 assesses Policy RUGA2 – Land South West of Ghyll Road. Further to our comments in the Section above regarding this allocation, it is our opinion that the SA results are flawed as a number of objectives have been marked as ?/+ or ? where they clearly should be a minus. This is particularly relevant for SA objective 2 Conserve and enhance the District's Countryside, landscape, historic environments and cultural assets. If taken forward this allocation would result in the direct loss of part of the High Weald AONB to built development. Given this, we do not agree with the ?/+ assessment for this proposal.

We have no additional comments to make on the SA.

Soundness of the local plan

Natural England has considered the local plan against the tests of soundness in the NPPF. Our advice is that there are some issues which need to be addressed to ensure the plan is not unsound. In particular, Natural England is concerned that the local plan proposes an allocation for major development within the High Weald AONB, at Ghyll Road, Heathfield. Natural England **objects** to this allocation and recommends that it is deleted to avoid the plan being considered unsound.

We have provided advice that we do not consider mitigation measures are necessary to avoid an adverse effect on Ashdown Forest Special Area of Conservation (SAC), Lewes Downs SAC and Pevensey Levels SAC and Ramsar site from air quality impacts. If WDC decides to depart from our advice and considers that mitigation measures are required, it will be necessary for the council to conclude that the mitigation will be effective and there is sufficient certainty as to its delivery. In other words, if mitigation measures are being relied upon, it will be necessary for the council to ensure these measures are effective, reliable, timely and sufficiently certain to ensure the local plan is not unsound.

As the issues regarding air quality in particular are technically complex, we would be happy to attend the Examination in Public if that would aid the Council or the Inspector.

We would be happy to comment further should the need arise but in the meantime if you have any queries, please do not hesitate to contact me.

Yours faithfully
Marian Ashdown
Senior Adviser – Sustainable Development
Sussex and Kent Team
Marian.ashdown@naturalengland.org.uk

c.c.
Nigel Hannam - Director of Planning Policy and Economic Development
Marina Brigginshaw - Head of Planning Policy and Economic Development
Kelly Sharp – Planning Policy Manager

Annex 1 - HRA detailed comments

1. Comments on sections of the HRA that are relevant to the assessment methodology and therefore relevant to all designated sites are below. This is followed by comments on air quality that are relevant to all sites and then the specific impact pathways by designated site.

   Chapter 4

2. Para 4.41 implies that all features within a site boundary should be considered but this is "as a general rule" and areas are often also included in site boundaries as site fabric. Sometimes this is because the boundary is drawn to a recognisable feature on the ground such as the edge of a field or a road. It is relevant of course to consider the whole site at screening stage where further detailed information is not available. We are fortunate in that we have specific information about the location of qualifying features within the sites from the significant amount of detailed modelling that has been provided. Further stages of assessment should relate to the specific interest features of the site and their location on the site in relation to potential impacts.

3. Para 4.45 states "*It is clear that the focus of site integrity relates to the European site as a whole and not just the parts of the site where the qualifying habitats or species exist*". This may be the case on some sites where additional features are considered to contribute to the functionality of the site. However we consider this is not the case on all sites and this approach ignores the fact that boundaries to designated sites often run to a recognisable feature on the ground for practical mapping purposes. Additionally site fabric may also be included within site boundaries, these are areas of land, water and/or permanent structure that are not and never have been part of the special features of a site and do not contribute towards supporting a special feature of the site.

4. Para 4.47 - Article 17 of the Habitats Directive is the reporting mechanism used to assess the condition of SACs, although the monitoring can draw on CSM data where applicable.

5. Para 4.48 - It should be noted that CSM is related to the specific SSSI interest features rather than the N2K features although some of these may overlap in some cases.

   All sites - Air Quality

6. Natural England's comments regarding air quality are consistent with our nationally agreed internal approach to air emissions on road traffic[2]

7. We note WDC's conclusion that there will not be an adverse effect on the integrity of these sites, provided that mitigation measures are secured. Whilst we have reviewed the evidence specifically relating to WDC's local plan, our advice, that mitigation measures are not necessary to avoid an adverse effect, is consistent with our advice to WDC's neighbouring authorities[3] in their plan making.

8. We recognise that it is a matter for WDC as competent authority to reach its conclusion on the Appropriate Assessments, having considered the advice provided by Natural England. If WDC decides to depart from our advice and considers that mitigation is required, it will be necessary for the council to demonstrate that the mitigation will be effective and there is sufficient certainty as to its delivery.

9. We have provided advice on these measures in the context that we do not consider they are required to reach a conclusion of no adverse effect on the European sites. It is our considered opinion that the mitigation measures, as proposed by WDC, do not provide the

[2] http://publications.naturalengland.org.uk/publication/4720542048845824.

[3] Specifically Lewes District Council, the South Downs National Park Authority, Tunbridge Wells Borough Council, Hastings Borough Council, and Rother District Council

level of certainty that would be required under the Habitats Regulations. If the measures were needed, the impacts that WDC have identified would need to be negated or reduced to an acceptable level.

10. In our opinion, many of the measures proposed in Policies AF1 and AF2 are not specifically mitigation but the investigation, through monitoring, of what mitigation measures might be required. Other mitigation proposals are soft measures such as the introduction of electric vehicle charging points in new developments, the use of promotional material, and the provision and promotion of walking or cycling schemes, and electric transport. Whilst these are measures that may make some contribution to reducing background nitrogen loads, there is no evidence provided as to their efficacy or certainty as to their delivery.

11. As paragraph 4.59 of the HRA notes: "Overall *mitigation measures should only be used if the competent authority is confident that the approach is legally robust; based on evidence, effective, reliable, timely and sufficiently certain with regards to its delivery*".

12. Natural England welcomes any measures that will contribute to reducing background nitrogen loads to designated sites. However, as stated above, our advice is that these measures are not necessary to meet the requirements of the Habitats Regulations. Such actions would however be welcome as an element of a future Shared Nitrogen Action Plan (SNAP). We welcome WDC's commitment to working with Natural England and other stakeholders in developing locally targeted measures through the SNAP that can address all sources of atmospheric nitrogen pollution at a site level.

13. The recent opinion of General Advocate Kokott has been quoted within the HRA but at the time of writing this has not been handed down as a judgement so is subject to change and has limited weight. Whether a future judgement would have any relevance has not been fully assessed as yet.

14. Natural England previously provided advice on earlier versions of the modelling and monitoring reports under our Discretionary Advice Service (DAS). It is not necessary to repeat that advice verbatim however where pertinent, some aspects have been reproduced in the sections below.

15. Comments that relate to all of the designated sites are noted here with specific comments on the individual designated sites in the following sections.

16. The general requirement of the HRA is to assess
    - Is the designated site sensitive to air quality?
    - Are the interest features that are sensitive to air quality within an area likely to be impacted?
    - Will the additional input exceed 1% of the relevant critical level or load?
    - Is the background close to or over the critical load?
    - If all of these are yes then what is the ecological relevance of this (i.e. would the impact have an adverse effect on the integrity of the designated site).

17. In practice, where a site is already exceeding a relevant benchmark, the extent to which additional increments from plans and projects would undermine a conservation objective to 'restore' will involve further consideration of whether there is credible evidence that the emissions represent a real risk that the ability of other national or local measures and initiatives to otherwise reduce background levels will be compromised in a meaningful manner. This is a judgement to be taken by the competent authority which should be informed by, amongst others,
    - the extent to which any declining national trends in air pollution or strategic work to tackle emissions affecting the site more locally might otherwise lead to improvements,
    - the rate at which such improvement are anticipated to be delivered,
    - any credible evidence on the extent of the impacts of a plan or project and

- whether those impacts can properly be considered temporary and reversible.

18. Whilst most sensitive European Sites will be in this exceedance state, it does *not* automatically mean that further plans or projects affecting them would have an adverse effect on site integrity. Rather, it provides another piece of information to consider when determining whether a proposal might have a benign impact on site integrity and be acceptable or whether a conclusion of no adverse effect on site integrity cannot be reached by the assessment.

19. Table 1 in Chapter 5 of the HRA refers to Nitrogen oxides but is misleading in that it states that the levels have not decreased as expected. This may be the case but the same source identifies that since 1990, emissions from road transport have fallen by 76% due to the introduction of catalytic converters and stricter regulations (i.e. Euro Standards)[4]

20. The scenarios included in the air quality modelling by WDC's air quality consultants include
    - Scenario A – no emissions improvements in technology since the 2015 baseline;
    - Scenario B – improvements will come forward but without consideration of not yet tested technology and using AQC's CURED model and
    - Scenario C – that all the forecasted improvements will come forward (including future but as yet untested technology).

21. It is Natural England's considered opinion that Scenario B with its precautionary element is the most appropriate as it takes account of the Euro 6/VI standards which have been mandatory since 2015. Scenario C is not considered further in this response for any of the designated sites as we consider it is reasonable to remove forecasted improvements from untested technology.

22. Natural England had previously advised in its DAS advice to WDC[5] that Scenario A is considered to be wholly unreasonable and is not realistic of even current conditions considering that Euro 6/VI standards have been mandatory three years. Considering the Government's Clean Air Strategy, 25 year plan and increasing public awareness and desire for cleaner technology, it would seem unreasonable to assume no uptake at all of Euro 6/VI vehicles.

23. AQCs own investigations as noted in their reports has identified that Euro 6 cars manufactured prior to 2017 emit lower NOx than previous Euro 5 and earlier models and consider that "*it is reasonable to expect that diesel cars and vans registered for type approval since 2017 will, on average, generate even lower NOx emissions".* Additionally Euro VI (for heavy duty vehicles) also include an ammonia standard to avoid increase of ammonia from SCR technology. This is likely to reduce background ammonia levels over time.

24. Whilst there had previously been well documented errors in laboratory testing of these standards, they are now tested under real road testing and Defra forecasts have been updated to allow for this. This is explained more fully in the relevant sections for each site's air quality modelling undertaken by AQC. Indeed, previous iterations of the air quality modelling for all sites stated that "*The results from the sensitivity test and worst-case scenarios are likely to over predict emissions from vehicles in the future*".

25. There is a long established trend of declining background concentrations close to roads in particular as a result of technological improvements in vehicles even allowing for additional growth in Local Plans. In other words, we can still expect - even with the plan/project

[4] (http://naei.beis.gov.uk/overview/pollutants?pollutant_id=6).

[5] http://www.wealden.gov.uk/Wealden/Residents/Planning_and_Building_Control/Planning_Development_Management/Agents_and_Parish_Council_Information/Planning_Agents_Ashdown_Forest.aspx

timeframe – the overall environmental loading will return to below critical level and loads within an appropriate timeframe.

26. The Communication from the Commission is relevant here on the precautionary principle[6] which clarified "*The precautionary principle which is essentially used by decision makers in the management of risk should not be confused with the element of caution that scientists apply in their assessment of scientific data*".

27. The recommendation for using the lower end of the critical load is for screening for further assessment. Using Ashdown Forest heathland as an example, critical loads have other considerations for where in the range is appropriate including precipitation, hydrology and historical management as described on APIS site relevant critical loads page for Ashdown Forest SAC which are all designed to cover a broad range of situations (eg critical loads have a range and are not one measure that is site specific).

28. For all sites the 24 hour NOx critical level (CLE) of 75 µg/m3 has been used. This CLE presumes an exceedance of SO2 and O3. As previously explained, WHO[7] also consider a 200 level µg m-3.

    "*Experimental evidence exists that the CLE decreases from around 200 µg/m3 to 75 µg/m3 when in combination with O3 or SO2 at or above their critical levels. In the knowledge that short-term episodes of elevated NOx concentrations are generally combined with elevated concentrations of O3 or SO2, 75 µg/m3 is proposed for the 24 h mean*."

29. Of relevance to the appropriate CLE of 24hr NOx is Section A1.5 of Appendix 1 of the Ashdown Forest air quality report which states "*The deposition of sulphur has not been quantified as part of this study. Since the introduction of sulphur-free fuels, sulphur emissions from road traffic have fallen appreciably and, as such, impacts on ambient concentrations caused by traffic-related sulphur dioxide (SO2) emissions are no longer considered to be a significant concern in the UK."* As elevated concentrations of SO2 and O3 are not present on the designated sites considered within the Local Plan then the relevant CLE is 200 µg/m3.

30. Para 10.49 indicates that any increase where the site currently exceeds the CL/CLE has the potential to adversely impact on the designated site. This is misleading as this is not the case for inputs below 1% of the relevant CL/CLE. 1% of CL/CLE is considered by Natural England's air quality specialists (and by industry, regulators and other statutory nature conservation bodies) to be suitably precautionary, as any emissions below this level are widely considered to be imperceptible

31. In terms of whether there is an 'adverse' effect on the integrity of a designated site, the Advocate General's Opinion in *Sweetman*[8] indicated that, in her view, a plan or project involving *'some strictly temporary loss of amenity which is capable of being fully undone'* would not be an adverse effect on integrity. By comparison, the *'lasting and irreparable loss'* of part of the SAC feature in *Sweetman*[9] was ruled to be an adverse effect on integrity.

32. In practice therefore, where a site is already exceeding a relevant benchmark, the extent to which additional increments from plans and projects would undermine a conservation objective to 'restore' will involve further consideration. This may include consideration of whether there is credible evidence that the emissions represent a real risk and whether the ability of other national or local initiatives to otherwise reduce background levels will be

[6] https://publications.europa.eu/en/publication-detail/-/publication/21676661-a79f-4153-b984-aeb28f07c80a/language-en Page 2

[7] http://www.euro.who.int/__data/assets/pdf_file/0005/123098/AQG2ndEd_11no2level.pdf

[8] Advocate General Opinion in Case C-258/11 *Sweetman* (refer paras 58-61)

[9] Case C258-11 *Sweetman* (refer para 56)

compromised in a meaningful manner. This is a judgement which should be informed by, amongst other things, the extent to which any declining national trends in air pollution or strategic work to tackle emissions affecting the site more locally might otherwise lead to improvements, the rate at which such improvement are anticipated to be delivered, any credible evidence on the extent of the impacts of a plan or project and whether those impacts can properly be considered temporary and reversible.

Ashdown Forest Air Quality

33. Natural England welcomes the commitment that has been shown by Wealden District Council to undertake air quality monitoring and ecological monitoring over the last few years. A substantial amount of information has been submitted for this which is considered useful.

34. Natural England previously provided advice on earlier versions of the modelling and monitoring under our Discretionary Advice Service (DAS) dated 16 February and which is published on the WDC website so it is unnecessary to fully repeat that advice.

35. The air quality modelling is extensive and largely uses a bespoke model that has been developed by WDC's air quality consultants. However there are some changes to previous reports and newer additions to the modelling by adding an EA methodology to the deposition velocities. This is not the standard approach that Natural England recommended including for comparison but is a more detailed experimental approach that, to our knowledge, is not used routinely by the Environment Agency. Additionally the interpretation provided by WDC in their assessment of the Local Plan under the Habitats Regulations Assessment (HRA) and in undertaking their Appropriate Assessment is new information that has been provided as part of this consultation process.

36. The reports are very large and complex and the presentation of the data does not aid understanding of the outputs. We welcome the significantly clearer assessment that is presented within the HRA however this information is still presented in such a way as to indicate that there will be a net deterioration in 2028. The reasons why this is not the case is explained in more detail below.

37. Our advice is that where an existing national, regional or local initiative can be relied upon to lead to the reduction in background levels of pollution at a site, the competent authority should assess the implications of a plan or project against an improving background trend.

38. Natural England's advice is that Scenario B provides a suitably precautionary approach and is the most realistic for the reasons previously given. WDC have chosen to take Scenario A forward within their Appropriate Assessment. Natural England considers this Scenario to be wholly unreasonable for reasons previously given.

39. Additional Nitrogen (N) deposition will occur as a result of new development over the course of the plan period however this happens concurrently with the declining trend (both background and as part of the plan) of concentrations close to roads as a result of existing cleaner vehicle technology (as also noted in Section 7.7 of the air quality report). The improvements coming forward close to roads is declining faster than the additional inputs as part of the 10 year Local Plan.

40. Ashdown Forest as a whole exceeds the critical load and there may or may not be existing implications for the site condition which is the purpose of noting air quality as a threat on the site condition report for Ashdown Forest. A SNAP is the recommended approach to tackling background pollution however this is on a whole site approach recognising that the source attribution on the Air Pollution Information System (APIS)[10] notes other inputs including agriculture that have a much higher influence on the site than local transport. The SNAP will

[10] http://www.apis.ac.uk/srcl/source-attribution?submit=Source+Attribution&sitetype=SAC&sitecode=UK0030080&sitename=Ashdown+Forest

hopefully address the existing high concentrations that may not benefit as much due to improvements opposed to those areas close to roads which are expected to experience significant declines due to the long term reduction in concentrations due to cleaner vehicular technology.

41. Natural England advises that Chapter 15 of the air quality report, in particular 'with plan' emissions scenario B is the most realistic and sufficiently precautionary approach to assessing the impacts of the plan (in combination) on Ashdown Forest. However much of the information within the HRA looks specifically at the increase that will come forward as a result of increased traffic from growth within the plan and assesses that against the background situation in 2028 without the plan. Clearly there will be an increase but the relevance of the declining background has been given little consideration and how this changes the assessment of the ecological relevance in terms of any adverse effect on integrity of the site.

42. Ashdown Forest contains a mosaic of habitats including woodland which is not a notified feature of the SAC but is a feature of the SSSI designation. Where exceedances are affecting woodland, this should be disregarded in the AA and only exceedances affecting the notified features of dry heath and wet heath should be assessed. We welcome that this has been made clearer in the HRA than has been the case within the air quality and ecological monitoring reports.

43. Table 39 in the HRA demonstrates the decline expected in 2028, when compared to Table 41 this shows how little the local plan will retard that improvement. This identifies that the plan will not result in a worsening of the existing situation and will not outweigh the improvements and should only be seen as a small retardation of the improvements that are expected to come forward by the end of the plan period.

44. There are a number of comments in the HRA and the Local Plan that relate to the fact that at the end of the plan period, the site will still exceed the CL/CLE. These comments are not relevant to the HRA.

45. It is not the function of the plan to reduce all background levels that are a result of a number of other factors such as long range transport and farming impacts. These background levels will be addressed by national and international measures and the development of a SNAP to influence the local situation. We very much welcome WDCs strong commitment to working with the Ashdown Forest SAC working group on helping to develop a suitable SNAP.

46. The Appropriate Assessment must consider whether the impacts arising from the plan in combination would have an adverse effect on the site. It is our considered opinion that this is not the case.

47. Notwithstanding any of the above comments, the greatest relative declines in species abundance are for sites below critical load because nitrogen sensitive species may not have already been lost. When considering Ashdown Forest which is at/above the critical load for nitrogen deposition, the dose-response of heathland already loaded with nitrogen means a larger contribution of nitrogen would be required to result in further loss of species richness when compared to a site with much less nutrient loading (and thus more sensitive species). NECR210[11] (as shown in Table 21) attempts to quantify this dose-response. For example, a lowland heath site with background pollution of 5kg N ha-1 y-1 would require an annual contribution 0.4kg per ha of extra nitrogen to lose a further point of species richness whereas a site at 15kg N ha-1 y-1 would require 1.3kg to generate the same loss in species richness. Where the background is 20kg N ha-1 y-1 this increases further to 1.7kg.

48. The HRA states that NECR210 does not distinguish between species richness from undesirable or uncharacteristic species however for heathland in particular this aspect was

[11] http://publications.naturalengland.org.uk/publication/5354697970941952

taken into account in the NECR210 report and the conclusion were considered to be robust once confounding factors had been removed.

49. There are a number of assumption that have been made within the ecological monitoring that relate to the condition of Ashdown Forest however various sections of the Ashdown Forest Ecological Monitoring Report (July 2018) and previous iterations showed no significant correlation between grass:forb ratio and distance from a road. The expected correlation between foliar nitrogen concentrations and distance from road for Heath Plait Moss and Heather was also not observed and bryophytes and lichens (which are highly sensitive to Nitrogen) showed no statistically significant relationship between nitrogen index values and road. In summary, generally through the ecological monitoring report, it is noted that background air quality is a pressure on Ashdown Forest but much of the specific ecological monitoring and analysis is generally unable to attribute road contributions to be a statistically significant contributor to this.

50. Para 11.51- 11.54 provides further information following scoring of vegetation against the Ellenberg N values. This does not fully accord with the information contained within the ecological monitoring report (July 2018) where Nitrophobe species did not have relationship to distance from road nitrophile species did show a correlation although as the text states this was particularly at 2 quadrats that were 1m and 5m from the roads. Areas immediately at the kerbside or within the first 5m of the road will be subject to other confounding factors such as air disturbance by moving vehicles, salt from road gritting and dirt and run off from the road itself (Truscott 2005)

51. There is no doubt that large areas of the site are currently in unfavourable recovering condition however the reason for these to be classed as “recovering” is that there are measures in place to ameliorate the decline in the habitat which is considered to be wholly down to management constraints. Management of the site is not a function of the Local Plan. Comments on particular sections of the HRA are noted below.

52. Para 8.42 - The HRA refers to ‘Condition Standards Monitoring’, this is incorrect. It is ‘Common Standards Monitoring (CSM)[12] and is used to assess and monitor the condition of SSSIs. Article 17 (of the Habitats Directive) reporting is the mechanism used to assess the condition of SACs, although the monitoring can draw on CSM data where applicable.

53. Para 8.52 - Availability and analysis of Ashdown Forest condition assessment data. The raw data for the majority of the heathland units have been summarised, detailing the CSM attributes which failed and those which passed. This gives sufficient detail to provide a good understanding on a unit by unit basis of historical monitoring data. For this reason it is not necessary to retain the raw data.

54. Para 11.8 - SSSI monitoring: the report states that Natural England undertake SSSI condition assessments every 6 years. There is no set time length for periodic monitoring of SSSIs. The length of time between each condition assessment is dependent upon a number of factors. These factors include, but are not limited to, the nature of the habitat, whether there are management mechanisms in place (for example, Countryside Stewardship), and changes in circumstances (ownership, management).

55. Para 11.18 - CSM target attributes: The statement that each SSSI unit should comprise of at least 50% of heather vegetation is erroneous. CSM guidance for lowland heathland advises that the range of dwarf shrub cover should reflect local conditions, which greatly vary from site to site, and are influenced by many factors. Hence the CSM target, as detailed in the guidance is for ‘dwarf scrub cover to be between 25%-90%, rather than between 50-75%, which is referred to in the CSM guidance as an example. The target used in the approved and published Favourable Condition Table (FCT) for Ashdown Forest is dwarf scrub cover of

[12] http://jncc.defra.gov.uk/page-4060

between 25% and 90%, not 50-75%.

56. Para 11.20 - Poor species richness: the HRA states that only two forb species were found with any regularity across the units', and many only had one species. If two forb species are occasional across a unit, then the unit is considered to be meeting the target for that attribute, following JNCC CSM guidance. Plant diversity varies from site to site, and is dependent on a variety of factors, including management history, with some heathland sites being more species rich, whilst other sites are historically more species poor. No evidence has been provided that suggests that the site has historically supported a diverse range of forb species. Given that grazing was all but abandoned on Ashdown Forest in 1983, and from 1998 only the newly fenced area supported grazing animals in any great number, it is to be expected that many areas will be relatively species poor (Marrable, 2003).

57. Para 11.22 states that 44% of units failed on the bare ground target. However this appears to have no relevance to air quality impacts. Lack of bare ground is associated with lack of appropriate grazing.

58. Paras 11.79 to 11.81 - We welcome recognition of the particular issues with regards to the management of the site; in particular the current fencing constraints on common land. An additional note about the invisible fencing trial is that there were unfortunate technological problems and it is considered that this new technology may be more appropriate to flat pasture. It was found to be less suitable for the topography of Ashdown Forest.

59. Para 11.120 States that many of the SSSI target failings reflect known adverse effects from nitrogen deposition, despite 20 years of management. Restoration of degraded heathland is a long term process, and may take many decades to achieve – as stated in para 11.79 of the HRA. Although there has been funding to support management of Ashdown Forest for 20 years, it is only since the introduction of Higher Lever Stewardship in 2005 that the levels of funding have been at a level to support targeted and appropriate heathland management.

60. This statement also fails to take sufficient account of the current and past management history of the site. There is no evidence provided to suggest that nitrogen deposition impacts can be attributed to failing CSM targets across the heathland complex. The main reason why the majority of the heathland is not meeting the SSSI monitoring targets for one or more attributes is because of lack of regular grazing over a significant part of the heathland (as referenced in para 11.80 and 11.93 of the HRA).

61. This is illustrated by the fact that the two heathland units that are meeting all objectives, and considered to be in favourable condition are within the fenced area, where regular grazing is being maintained. Analysis of the condition assessment data shows that four of the units failing within the fenced area are failing because of the bracken cover and/ or age structure of dwarf shrubs only, not for poor species diversity, or a high grass:forb ratio, effects which the HRA appears to be attributing to nitrogen deposition. Where the fenced areas are failing on these attributes, it is likely to be because the fenced area, which covers more than 500 ha cannot be divided into smaller grazing units, thus control of grazing is limited.

62. Para 11.121 - The report states that an increase in atmospheric pollution and nitrogen deposition can affect species diversity and grass:forb ratios, graminoid abundance and a decrease in species richness. The HRA references that other variables/factors can influence site condition, including visitor pressure and management practices (para 11.72) then fails to acknowledge that lack of, or inappropriate grazing can also affect all of these attributes. There have been many studies that have provided evidence for this: (Lake *et al*, 2001), (Bullock and Pakeman 1997). Of particular relevance is the research report commissioned by English Nature that undertook a comparison study of the ungrazed and grazed areas within Ashdown Forest which found that the grazed areas supported a more diverse plant community (Marrable, 2003).

63. The HRA asserts that Ashdown Forest is in unfavourable, declining condition, rather than

unfavourable recovering. The Natural England definition of declining condition is that: 'site condition is getting progressively worse' (NE Standards, SSSIs) No evidence has been provided to support this assertion. Para 11.93 summaries the 2012 SSSI condition assessment conclusions which reported that 'things have got a little worse, but due to small sample size there was not enough difference to be sure that things are getting worse'.

Pevensey Levels Air Quality

64. Natural England provided advice to the Council in December 2017 under our Discretionary Advice Service (DAS) on a previous iteration of the air quality report. Some of this information has been included within the HRA document and it is not necessary to reproduce our previous advice in full. However since that advice was provided the report has been updated. The July 2018 air quality report does not change the advice previously given that Pevensey Levels SAC and Ramsar is water quality dependant and in particular Phosphorous (P) limited.

65. Our advice remains that the Local Plan poses no credible air quality risk to Pevensey Levels SAC and Ramsar and there would be no likely significant effect as the site is not sensitive to air quality.

66. The freshwater ditches which the Habitats Regulations Assessment correctly identifies as significant provides habitat for both the SAC feature *Anisus vorticulus* and the Ramsar features- the invertebrate and plant assemblages. Pevensey features 450km of freshwater ditches on which the SAC and Ramsar features depend. Ditches do not fit easily within the APIS habitat definitions however, rivers and streams would be the most relevant as there is effectively 'flow' within the overall water management system with water moving into and out of the levels through a complex system of water level management (as touched in from paras 21.34 -21.35).

67. Pevensey Levels is known to be a P limited site. The HRA includes detailed comments with regard to the possibility of Nitrogen (N) having an impact on emergent vegetation however this appears to be a misunderstanding of limited systems. Nitrogen could potentially have an impact on nitrogen sensitive features of a P/N co-limited site but Pevensey Levels is not a co-limited site so N would have no appreciable effect. The greatest contributor of P on the site is the waste water treatment works that discharge to the levels however P is controlled under the discharge permissions.

68. Notwithstanding the P limitation of the site, there is an extensive discussion of NOx critical load in relationship to Pevensey Levels based on the assumption outlined in paragraph 5.26, that the site features low and medium altitude hay meadow. Unfortunately although coastal floodplain grassland can feature this habitat, on Pevensey this is not the case. As outlined in the SSSI favourable condition table the site is largely semi-improved grassland which is seasonally inundated. This wet grassland is feeding habitat for the SSSI notified feature of wintering waders, specifically lapwing. According to APIS, semi improved grassland has no identifiable critical load therefore the discussion of the modelling in relationship to critical load should be discounted and additionally has no relevance to the qualifying features of the site.

69. The conclusions of the air quality modelling in paras 15.39 – 15.42 suggest that likely significant effect on the site cannot be determined. Para 15.54 goes further in that it states that the precautionary principle applies based on information in table 70. Information in this table refers to various scenarios eg "chronic conditions of elevated nitrogen", "leaching of nitrogen into the ditches from surrounding grazing land" however as explained above, this is not a relevant consideration for a P limited site. Additionally there are other areas of the HRA that do not accurately reflect the interest features of the site or the P limitation, particularly Tables 4, 5 and 8.

70. The Redfield ratio is 16:1 for N:P. In very simplistic terms this means that there would have

to be sixteen times the amount of Nitrogen to Phosphorous for the balance to be in equilibrium and for Nitrogen to start to impact on the ditch system. A P limited site in practice means limited uptake of Nitrogen because the balance between Nitrogen and Phosphate is not correct. This is explained further by Liebig's law (also known as the law of the minimum) whereby a plants growth is limited by the nutrient in shortest supply. Therefore for a P limited site, N is not considered as a threat to site condition.

Lewes Downs Air Quality

71. Natural England provided advice to the Council in December 2017 under our Discretionary Advice Service (DAS) on a previous iteration of the air quality report. Some of this information has been included within the HRA document and it is not necessary to reproduce our previous advice in full. However the updated July 2018 air quality report does not change much of the advice previously given or the conclusion that we do not consider that air quality will have an adverse effect on the designated site.

72. For the reasons provided elsewhere in this response, Scenario A is considered to be an unreasonable worst case scenario whilst Scenario B has a sensible level of precaution and is considered to be the appropriate scenario to consider within the HRA.

73. This advice is based on the topography of Lewes Downs SAC and the interest features for which it is designated. Not all features of a designated site are present within a given location within the site. In some cases, the boundary of the site may include other features that may not form part of a qualifying feature. Therefore, a site's conservation objectives are unlikely to apply equally to all parts of a site. To clarify, the woodland is not a qualifying feature of the SAC however it is a feature of the SSSI.

74. Table 64 states that the woodland is integral to the site to support "*organisms presumably involved in supporting and maintaining the H6210 grassland such (e.g. rabbits, birds, invertebrates)*". This is an erroneous assumption; the woodland, whilst a feature of the SSSI designation is not integral to the SAC.

75. The western edge of Lewes Downs SAC closest to the A26 and the area that could be impacted by air quality impacts has a thick belt of woodland cover. The topography of this area of Lewes Downs rises very steeply from the road; one area is actually a disused pit. The woodland belt currently functions as a buffer against air quality impacts onto the calcareous grassland and is also an important component of soil stability of the steep gradient. It is therefore not within the conservation objectives to remove this feature with any intention to restore to calcareous grassland.

76. Based on Scenario B, in the main the only habitat likely to be impacted by air quality deterioration even without background improvements is woodland which is not a qualifying feature of the SAC. The two units within 200m of the road are both in favourable condition with the air quality levels at their present level. There is an overall declining trend in Nitrogen concentrations, and there is no reason to expect this trend to reverse.

77. It is clear from this that there is no credible risk that the Local Plan would have an adverse effect on Lewes Downs SAC from air quality impacts.

Ashdown Forest SAC and SPA – Recreational Pressure

78. Natural England has worked collaboratively with Wealden District Council together with other surrounding Councils over the course of many years to ensure that there is a collective and robust mitigation strategy to avoid adverse impacts on Ashdown Forest as a result of increased recreational pressure affecting the interest features of Ashdown Forest. As part of this collaborative working relationship we have also been involved in discussions of potential alternative mitigation measures. We are fully supportive of WDCs approach and are satisfied that the most appropriate mitigation measures have been taken forward by WDC

and the other relevant Local Authorities and are satisfied with the proposed and currently operating SANGs and the measures that are being included within the SAMM.

Pevensey Levels Water Quality

79. While the following is implicit in the information put forward in the HRA, for clarity, Natural England summarise the issue of development and water availability as follows:

80. Increased surface water flow from the hard surface created by development has the potential to materially alter water levels within Pevensey Levels. As described in paras 16.26 – 16.25 the Levels are a complex managed system. Relatively stable water levels, all year around, are required for the Natura 2000 features. Large-scale development within the catchment has the potential to increase the flow of water into the site and alter the nature of that flow, i.e. large increases during heavy rainfall, all of which could have a potential impact. Additionally, water quality from surface run off which could be contaminated by a range of pollutants, including oil and sediment, would also have an adverse impact.

81. Para 16.15 water level management is achieved on a site basis and is principally delivered by the Pevensey and Cuckmere Water Level Management Board and the Environment Agency. Individual landowners have field level control.

82. Paras 16.19-16.24 The Environment Agency has reviewed all licensable discharges into Pevensey Levels through the Review of Consents process with Natural England's advice. This process found that the principle licensable inputs which impacted on Pevensey Levels were the sewerage treatment works.

83. Para 16.22. Natural England has aligned water quality targets for the site with the Environment Agency's Water Framework Directive targets for Good Ecological Status. These targets are site specific and were developed using the Agency's detailed models and available data. The mean range of soluble reactive phosphorous are 0.085 mgl-1 near Hailsham to the 0.063mgl-1 near Windmill Hill. Further water chemistry targets are based on Common Standards Monitoring and are as follows: DO 70% saturation 10th centile; BOD 4 Mgl-1 90th Centile; 0.6 Ammonia mgNl-1

84. Para 16.54 - Natural England welcomes Policy SWGA7 (Protection of Pevensey Levels) and agrees that this policy is essential to ensure no likely significant effect on the site. However, we would further advise that a SUDS policy needs to specifically address the quality and availability targets laid out in our advice note of November 2017.

85. We support the development of the policy described in paras 16.60 and 16.61 and the inclusion of SUDS measures within the master plan described in para 16.73. It should be noted that the scale and nature of SUDS required may not be able to be achieved on a site-by-site basis so applications will also need to be assessed at a project level. Lastly, long term management of SUDS is essential and avenues to ensure this could be explored through the policy as it develops.

86. In relation to waste water discharge it should be noted that package treatment works are unlikely to meet the 'in water' quality requirements of Pevensey Levels and therefore will not be licensable by the Environment Agency. It is essential therefore that the para 16.89, in relation to headroom at the existing waste water treatment works and para 16.64 that all development sites will be required to provide a connection to the sewerage system, should be adhered to.

87. Natural England's concurs with the Council that a strategic approach is the most desirable. Strategic-scale SuDS could also address additional concerns such as open space access and green infrastructure provision. We therefore welcome the hook within the policy and the opportunity it presents for Natural England to work with Wealden and other relevant authorities to develop this approach.

88. Further comments on the wider interconnected issues that include water quality may be found in Annex 2

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Annex 2: Site Allocations

Natural England's comments on individual allocations and core areas are provided in Table 1 and Table 2 below.

The following comments apply to all allocations within the High Weald AONB:

- Allocations within the AONB must protect and enhance the character of the AONB, in accordance with WDC's Local Plan Policies, the High Weald AONB Management Plan, National Character Areas and Local Character Areas.

- All allocations within the AONB have the potential to negatively impact upon the designated landscape. As such, Natural England recommends that full consideration must be given to testing whether alternative locations outside of the AONB are available in preference to development within this nationally important landscape.

- Wealden District Council is responsible for determining if allocations constitute major development, in line with paragraphs 172 of the NPPF. Through the local plan, the Council must ensure that all allocations for major development within the AONB are robustly assessed against the three tests, including if there are alternatives to meet housing requirements.

- Natural England advises that AONBs should not be considered as suitable locations for major development. We have provided specific comments regarding allocation HEA2 – Land at Ghyll Road Heathfield (Policy RUGA2), as in our opinion this proposal represents major development within an AONB.

- Please note that absence of direct reference to major development for other proposed allocations in the AONB does not mean that we have no concerns. At this stage we cannot be sure whether the expected yield of each allocation would or would not be considered major development. This is a matter for the Council to consider.

- Development proposals should be informed by a Landscape and Visual Impact Assessment (LVIA) in line with the Guidelines for Landscape and Visual Impact Assessment (GLVIA 3rd edition).

A number of allocations may impact sites which are notified for their biodiversity importance at national and international levels. These issues are addressed for each allocation in the tables below.

HEA2 – Land South West of Ghyll Road, Heathfield (Policy RUGA2)

We have particular concerns regarding this proposed allocation, which we consider to be major development within the AONB. As the proposal involves direct loss of AONB land to development, we do not consider it is possible to mitigate the impacts of this proposed allocation.

Natural England does not consider that the AONB, as a nationally important landscape, is a suitable location for major development. The National Planning Policy Framework (para. 172) states that '*Great weight should be given to conserving and enhancing landscape and scenic beauty in… Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues.*' Paragraph 172 further states that '*planning permission should be refused for major development other than in exceptional circumstances'*.

The proposal is also in our opinion contrary to Local Plan Policy EA 5 which states: '*Development within or affecting the setting of the High Weald Area of Outstanding Natural Beauty (AONB), as defined on the proposals map, will only be permitted if it conserves and seeks to enhance natural beauty...Such development should be small scale*.'

The 'Wealden Local Plan Sites - Landscape & Ecological Assessment Study' (Chris Blandford Associates July 2017) assesses the site HEA2 as follows:

"*The Site has a **Low Landscape Capacity** due to its high sensitivity and very high landscape value. Its location within the High Weald AONB and the coherent ancient landscape pattern, gives the Site a very high landscape value*." The assessment further highlights the rural character, the field boundaries that "*contribute to the unique ancient field patterns" and the increasingly rare semi improved neutral grassland.*

The document draws on previous report 'Wealden Landscape & Settlement Character Assessment' (2014) which similarly identified the site as having a low landscape capacity for accommodating development. The 2014 report notes that Landscape Setting Area (LSA) 5 '*…is situated within the High Weald AONB resulting in High Landscape Value. The linear pattern of stream corridors, settlements and footpaths within this area is considered to be distinctive and contributes to High Landscape Sensitivity. Pockets of Ancient Woodland are sensitive landscape features and further contribute to the value of the landscape.'* The evidence base used to inform the plan therefore does not support the allocation of HEA2.

Our view is further supported by the supporting text for policy EA 5 which states that '*the siting of major development in AONBs would be inconsistent with the aims of the designation*.' In this regard, we do not agree with the council's assessment that this site (as one of the specific sites for which development is allocated), has been assessed '*as suitable to accommodate growth taking into account the AONB designation and its purpose*.'

In relation to allocation HEA2, 'Development in the High Weald AONB background paper' (WDC Aug 2018) considers the three tests set out in the NPPF regarding major development within AONBs. However we consider there are flaws in the assessment. Whilst consideration of the need for the development has been considered, this is relating to the requirement for additional housing within Heathfield; it is not clear whether appropriate consideration has been given to providing this level of housing in a different area with due regard to avoiding the impacts on the AONB. The consideration of any detrimental effect on the environment and the landscape from this allocation relates to visual impact only. No consideration is given to the landscape impact itself, which will include direct loss of features that are special qualities of the AONB.

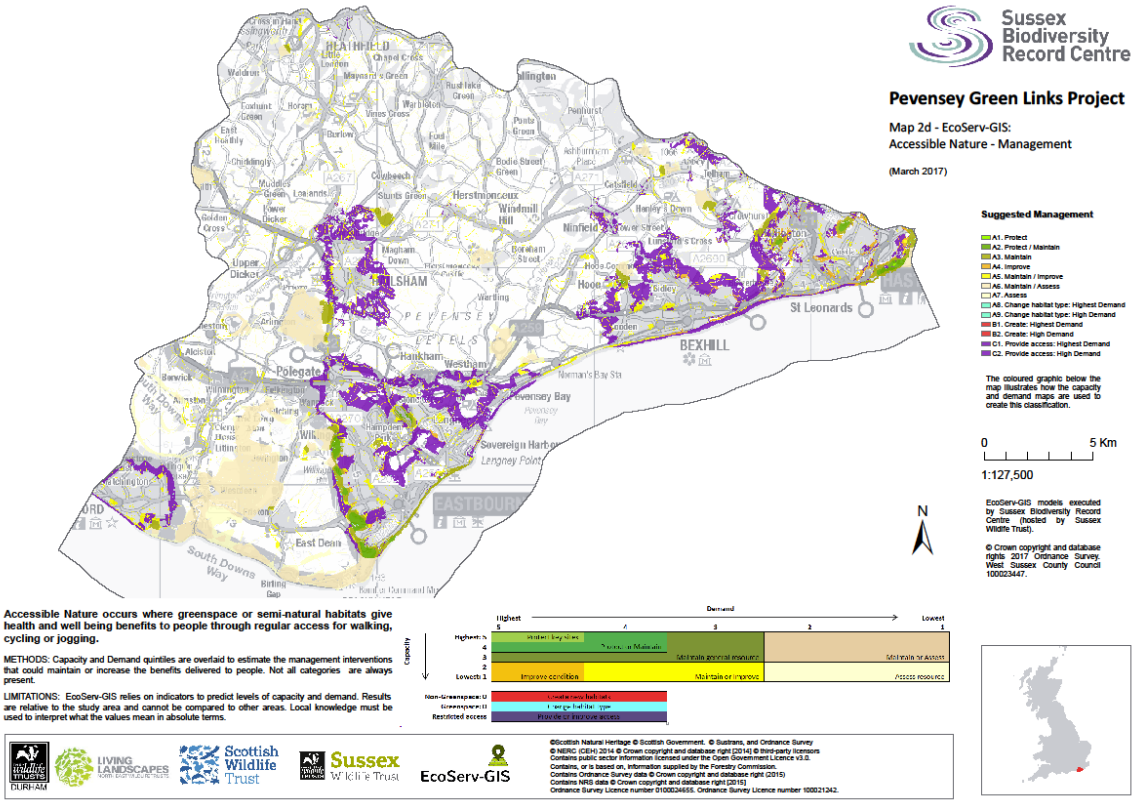
We consider that the uncertainty of whether this allocation would meet the exceptional circumstances test means that the plan should not rely on this allocation.

Natural England therefore **objects** to this allocation and recommends that it is deleted to avoid the plan being considered unsound.

<u>South Wealden Growth Sector</u>

Policy SWGA7 (Protection of Pevensey Levels) should be included in the strategic infrastructure requirements for **all** identified sectors which form part of the Pevensey catchment. Without this there would be a risk that the housing numbers in each sector (and sub sector) that have been proposed may not be achievable unless Sustainable Urban Drainage engineering to meet the water availability and quality requirements of the site is designed and, importantly, placed appropriately.

Natural England notes the current lack of accessible natural greenspace. The analysis below, undertaken by Sussex Biodiversity Record Centre, identifies where there is currently a lack of accessible natural greenspace without future development (purple shading).



The existing lack of wider open space provision, particularly around Hailsham and Polegate, was noted in Wealden's research commission into Open Space undertaken by Ethos environmental (Table 15 in the Wealden Open Space study). Further housing provision brings further need and, more notably, opportunities to address the current deprivation (in terms of lack of greenspace).

Policy for accessible natural greenspace provision often fails to be delivered on the ground, particularly when policy is translated into site development, which is unfortunate considering the acknowledged social, economic and health benefits that greenspace delivers. Bearing this in mind, Natural England recommends that greenspace provision is quantified for each sector area. We would recommend that spatially specific and ambitious targets are set for locally accessible green infrastructure.

As per our advice of September 2017 we would suggest that developments which are directly adjacent to the site should include ecological enhancements which effectively screen the protected site. It must also be noted that although Pevensey Levels provides economic benefit and ecosystem services to the area (according to Atkins 2014 analysis in the Water Level Management Review these total a £5 million a year benefit without the additional £11 million provided by biodiversity benefits) it does not provide accessible natural greenspace because it is privately owned farmland.

During the lifetime of this local plan, district level European protected species licensing will also come forward. Therefore Natural England suggests that provision is made within the overall plan to lever in these developments, through a cross-cutting planning policy document.

Natural England would therefore suggest:

- SWGA7 is added to sector and subsector policies within the Pevensey catchment to ensure that adequate SUDS and waste water provisions are made on an appropriate scale.

- That specific targets are included in all sector and subsector policies for green infrastructure provision using (as a minimum) the standards within the open space study undertaken in Sept 2017.

- Net gain (which will include biodiversity enhancements), district licencing and biodiversity commitments should also be made specific within each sector.

Table 1. Comments on site allocations

Area	Site ID	Provision	Designation Impacted	What should be considered for this allocation?	Further Advice
Hailsham	HN1A HN1B HN1C HN1D HN1E HE2A HE2B HSE3A HSE3B HSE3C HS4A HS4B HS5	519 160 370 400 80 255 258 150 110 18 Windfall	Pevensey Levels SSSI, SAC, Ramsar	Water quality and quantity. Any development must consider the hydrological impacts upon the water courses which are located on and adjacent to the site which feed into the Pevensey Levels. A comprehensive approach must be undertaken in order to mitigate any potential adverse impacts, in accordance with Policy SWGA7. Reference should also be made to 'Natural England's Standard Advice on development within the Pevensey catchment' (September 2017), which advises on targets for discharges.	Wording and references to policies should be consistent across all allocations to aid clarity and ensure consistent approaches. Where policy wording requires measures to assist the improvement of water quality within the Pevensey Levels to a 'good ecological status', reference to water quality targets identified in 'Natural England's Standard Advice on development with the Pevensey catchment' (September 2017) may provide further clarity. Policy SWGA 25: Currently, the policy aims for no net loss, which does not align with the current NPPF (2018). Policy wording needs to be updated to reflect the requirement for net gain, according with the overarching local plan aims requirements for specific and clear aims for measurable net gains for nature.
Polegate	PN1 SHELAA 772/1510: Dittons Farm	23 76	Pevensey Levels SSSI, SAC, Ramsar	Water quality and quantity. Any development must consider the hydrological impacts upon the water courses which are located on and adjacent to the site which feed into the Pevensey Levels. A comprehensive approach must be undertaken in order to mitigate any potential adverse impacts, in accordance with Policy SWGA7. Reference should also be made to 'Natural England's Standard Advice on development within the Pevensey catchment' (September 2017), which advises on targets for discharges.	To ensure a consistent approach for all allocations, SHELAA sites should be included within policy wording, or have specific policies as appropriate.

Stone Cross	SC1A SC1B SC1C SC2A SC2B	100 90 75 318 250	Pevensey Levels SSSI, SAC, Ramsar	Water quality and quantity. Any development must consider the hydrological impacts upon the water courses which are located on and adjacent to the site which feed into the Pevensey Levels. A comprehensive approach must be undertaken in order to mitigate any potential adverse impacts, in accordance with Policy SWGA7. Reference should also be made to 'Natural England's Standard Advice on development within the Pevensey catchment' (September 2017), which advises on targets for discharges.	
Heathfield	HEA1	30	High Weald AONB; Heathfield Park SSSI	The policy acknowledges the need to consider the site's location within the AONB to ensure the character of the AONB is protected and enhanced. Should this allocation be taken forward, policy should include reference to the AONB Management Plan, NCA and LCA, together with a Landscape and Visual Impact Assessment (LVIA) in line with the Guidelines for Landscape and Visual Impact Assessment (GLVIA 3rd edition). Policy wording includes welcome reference to SUDS, however Heathfield Park SSSI is an example of an ancient ghyll woodland, and as such is sensitive to water quality impacts. Development should consider the hydrological impacts on the SSSI, and include suitable mitigation measures to address water quality impacts.	Regarding paragraph 172 of the NPPF, it is for the decision maker to determine what is considered as major development within the AONB. All allocations for major development within the AONB need to be robustly assessed against the three tests in the NPPF (paragraph 172).

	HEA2: Land south west of Ghyll Road	103		The policy acknowledges the need to consider the site's location within the AONB to ensure the character of the AONB is protected and enhanced. All allocations for major development within the AONB need to be robustly assessed against the three tests in the NPPF (paragraph 172). Should this allocation be taken forward, policy should include reference to the AONB Management Plan, NCA and LCA, together with a Landscape and Visual Impact Assessment (LVIA) in line with the Guidelines for Landscape and Visual Impact Assessment (GLVIA 3rd edition).	**Natural England objects to this allocation**, as we consider this to be major development within the AONB. Key environmental assets such as AONBs are not considered suitable locations for major development. There is no evidence to demonstrate that the development meets the three tests for exceptional circumstances. Furthermore, the allocation will result in the direct loss of AONB, directly contradicts the aims of the AONB Management Plan, and prevents enhancement and protection of the AONB. We advise that this allocation is withdrawn to avoid the risk of the plan being found unsound.
Wadhurst	WAD1 WAD2 WAD3 WAD4	20 10 21 40	High Weald AONB	The policy needs to consider the site's location within the AONB, ensuring the character of the AONB is protected and enhanced, with reference to the Management Plan, NCA and LCA, together with the requirement that all strategic site allocations are informed by a Landscape and Visual Impact Assessment (LVIA) in line with the Guidelines for Landscape and Visual Impact Assessment (GLVIA 3rd edition).	Regarding paragraph 172 of the NPPF, it is for the decision maker to determine what is considered as major development within the AONB. All allocations for major development within the AONB need to be robustly assessed against the three tests in the NPPF (paragraph 172).
Horam	SHELAA: 841/3030 911/3030	 38 36			To ensure a consistent approach for all allocations, SHELAA sites should be included within policy wording, or have specific policies as appropriate.

Ninfield	NIN1	45	Pevensey Levels SSSI, SAC, Ramsar	Water quality and quantity. Any development must consider the hydrological impacts upon the water courses which are located on and adjacent to the site which feed into the Pevensey Levels. A comprehensive approach must be undertaken in order to mitigate any potential adverse impacts, in accordance with Policy SWGA7. Reference should also be made to 'Natural England's Standard Advice on development within the Pevensey catchment' (September 2017), which advises on targets for discharges.	
Mayfield	MAY1: Mayfield Cricket Club	50	High Weald AONB	The policy acknowledges the need to consider the site's location within the AONB and requirement for LVIA to ensure the character of the AONB is protected and enhanced. The policy needs to ensure that the character of the AONB is protected and enhanced, in accordance with Policy EA 5 (which should include reference to the AONB Management Plan, NCA and LCA).	Regarding paragraph 172 of the NPPF, it is for the decision maker to determine what is considered as major development within the AONB. All allocations for major development within the AONB need to be robustly assessed against the three tests in the NPPF (paragraph 172).

Table 2. Comments on Core Areas

Core Area	Designation Impacted	What should be considered for this allocation?	Significant Concerns
Arlington Upper Dicker	Arlington Reservoir SSSI	All planning applications (except householder) outside or extending outside existing settlements/urban areas affecting greenspace, farmland, semi natural habitats or landscape features such as trees, hedges, streams, rural buildings/structures should consider impacts of surface water discharges on the SSSI. This includes discharges to ground (e.g. to soakaway) or to surface water features, such as a beck or stream. Note that this does not include discharges to mains sewer which are unlikely to pose a risk at this location.	
Balls Green Bells Yew Green Broad Oak Cross in Hand Five Ashes Mark Cross Maynards Green	High Weald AONB	The policy acknowledges the need to consider the site's location within the AONB and requirement for LVIA to ensure the character of the AONB is protected and enhanced. The policy needs to ensure that the character of the AONB is protected and enhanced, in accordance with Policy EA 5 (which should include reference to the AONB Management Plan, NCA and LCA).	Regarding paragraph 172 of the NPPF, it is for the decision maker to determine what is considered as major development within the AONB. All allocations for major development within the AONB need to be robustly assessed against the three tests in the NPPF (paragraph 172).
Berwick Station	Arlington Reservoir SSSI; Milton Gate Marsh SSSI	Development should consider impacts of surface water discharges on the SSSI. This includes discharges to ground (e.g. to soakaway) or to surface water features, such as a beck or stream. Note that this does not include discharges to mains sewer which are unlikely to pose a risk at this location.	

Blackboys	High Weald AONB (setting)	Development should consider the site's location adjacent to the High Weald AONB and requirement for LVIA. Policy WLP5 (Core Areas) should include cross reference to Policy EA 5, which requires consideration of development affecting the setting of the AONB. Reference to the AONB Management Plan should also be made.	
Boreham Street Windmill Hill	High Weald AONB; Pevensey Levels SSSI, SAC, Ramsar	Development should consider the site's location adjacent to the High Weald AONB and requirement for LVIA. Policy WLP5 (Core Areas) should include cross reference to Policy EA 5, which requires consideration of development affecting the setting of the AONB. Reference to the AONB Management Plan should also be made. Pevensey Levels SSSI: Any development must consider the hydrological impacts upon the water courses which are located on and adjacent to the site which feed into the Pevensey Levels. A comprehensive approach must be undertaken in order to mitigate any potential adverse impacts, in accordance with Policy SWGA7. Reference should also be made to 'Natural England's Standard Advice on development within the Pevensey catchment' (September 2017), which advises on targets for discharges.	

Chelwood Common Danehill Hadlow Down High Hurstwood	High Weald AONB; Ashdown Forest SSSI, SPA, SAC	The policy acknowledges the need to consider the site's location within the AONB and requirement for LVIA to ensure the character of the AONB is protected and enhanced. The policy needs to ensure that the character of the AONB is protected and enhanced, in accordance with Policy EA 5 (which should include reference to the AONB Management Plan, NCA and LCA). Ashdown Forest: all development with the potential to impact Ashdown Forest must be undertaken in accordance with Policy EA2.	Regarding paragraph 172 of the NPPF, it is for the decision maker to determine what is considered as major development within the AONB. All allocations for major development within the AONB need to be robustly assessed against the three tests in the NPPF (paragraph 172).
Framfield Maresfield Town Row	Ashdown Forest SSSI, SPA, SAC	All development with the potential to impact Ashdown Forest must be undertaken in accordance with Policy EA2.	
Frant	High Weald AONB; Eridge Park SSSI	The policy acknowledges the need to consider the site's location within the AONB and requirement for LVIA to ensure the character of the AONB is protected and enhanced. The policy needs to ensure that the character of the AONB is protected and enhanced, in accordance with Policy EA 5 (which should include reference to the AONB Management Plan, NCA and LCA). Development should consider impacts of surface water discharges on the SSSI. This includes discharges to ground (e.g. to soakaway) or to surface water features, such as a beck or stream. Note that this does not include discharges to mains sewer which are unlikely to pose a risk at this location.	Regarding paragraph 172 of the NPPF, it is for the decision maker to determine what is considered as major development within the AONB. All allocations for major development within the AONB need to be robustly assessed against the three tests in the NPPF (paragraph 172).

Hankham Magham Down Pevensey	Pevensey Levels SSSI, SAC, Ramsar	Any development must consider the hydrological impacts upon the water courses which are located on and adjacent to the site which feed into the Pevensey Levels. A comprehensive approach must be undertaken in order to mitigate any potential adverse impacts, in accordance with Policy SWGA7. Reference should also be made to 'Natural England's Standard Advice on development within the Pevensey catchment' (September 2017), which advises on targets for discharges.	
Punnetts Town	High Weald AONB; Bingletts Wood SSSI	The policy acknowledges the need to consider the site's location within the AONB and requirement for LVIA to ensure the character of the AONB is protected and enhanced. The policy needs to ensure that the character of the AONB is protected and enhanced, in accordance with Policy EA 5 (which should include reference to the AONB Management Plan, NCA and LCA). Development should consider impacts of surface water discharges on the SSSI. This includes discharges to ground (e.g. to soakaway) or to surface water features, such as a beck or stream. Note that this does not include discharges to mains sewer which are unlikely to pose a risk at this location.	Regarding paragraph 172 of the NPPF, it is for the decision maker to determine what is considered as major development within the AONB. All allocations for major development within the AONB need to be robustly assessed against the three tests in the NPPF (paragraph 172).